

## Extra Ordinary Part - VI / 2000

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# The Gujarat Government Gazette

## EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

### PART—VI

Acts of Parliament and Ordinances promulgated by the President.

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 18th February, 2000.

No.RP/9/2000/Ord.-2/2000/E:- The following Ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 24th January, 2000 is republished for general information:-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 24th January, 2000/Magha 4, 1921 (Saka)

THE TELCOM REGULATORY AUTHORITY OF INDIA  
(AMENDMENT) ORDINANCE, 2000

No. 2 of 2000

Promulgated by the President in the Fiftieth Year of the Republic of India.

An Ordinance to amend the Telecom Regulatory Authority of India Act, 1997.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Telecom Regulatory Authority of India (Amendment) Ordinance, 2000.

Short title and commencement.

(2) It shall come into force at once.

Amendment of long title. 2. In the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the principal Act), in the long title, for the words "Telecom Regulatory Authority of India to regulate the telecommunication services," the words "Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector" shall be substituted. 24 of 1997.

Amendment of section 2. 3. In section 2 of the principal Act,—

(a) after clause (a), the following clause shall be inserted, namely:—

'(aa) "Appellate Tribunal" means the Telecom Disputes Settlement and Appellate Tribunal established under section 14;'

(b) after clause (e), the following clause shall be inserted, namely:—

'(ea) "licensor" means the Central Government or the telegraph authority who grants a licence under section 4 of the Indian Telegraph Act, 1885;'

13 of 1885.

(c) in clause (f), for the word "Government", the words "Government as a service provider" shall be substituted;

(d) in clause (k), the following proviso shall be inserted, namely:—

"Provided that the Central Government may notify other service to be telecommunication service including broadcasting services."

Amendment of section 3.

4. In section 3 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The Authority shall consist of a Chairperson, and not more than two whole-time members and not more than two part-time members, to be appointed by the Central Government."

Substitution of new section for section 4.

5. For section 4 of the principal Act, the following section shall be substituted, namely:—

Qualifications for appointment of Chairperson and other members.

"4. The Chairperson and other members of the Authority shall be appointed by the Central Government from amongst persons who have special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management or consumer affairs:

Provided that a person who is, or has been, in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than three years."

Amendment of section

6. In section 5 of the principal Act,—

(a) for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

"(2) The Chairperson and other members shall hold office for a term not exceeding three years, as the Central Government may notify in this behalf, from the date on which they enter upon their offices or until they attain the age of sixty-five years, whichever is earlier.

(3) On the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, a person appointed as Chairperson of the Authority and every other person appointed as member and holding office as such immediately before such commencement shall vacate their respective offices and such Chairperson and such other members shall be entitled to claim compensation not exceeding three months pay and allowances for the premature termination of the term of their offices or of any contract of service."

(b) in sub-section (5), for the words "other members", the words "whole-time members" shall be substituted;

(c) after sub-section (6), the following sub-section shall be inserted, namely:—

"(6A) The part-time members shall receive such allowances as may be prescribed."

(d) in sub-section (7), the words, brackets and figure "or sub-section (3)" shall be omitted;

(e) in sub-section (8),—

(i) in clause (b), for the words "two years", the words "one year" shall be substituted;

(ii) after clause (b), the following proviso shall be inserted, namely:—

"Provided that nothing contained in this sub-section shall apply to the Chairperson or a member who has ceased to hold office under sub-section (3) and such Chairperson or member shall be eligible for re-appointment in the Authority or appointment in the Appellate Tribunal."

7. In section 7 of the principal Act, for sub-sections (2) and (3), the following sub-section shall be substituted, namely:—

Amendment  
of section  
7.

"(2) No such member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter."

8. In section 10 of the principal Act, in sub-section (2),—

Amendment  
of section  
10.

(a) for the words "determined by regulations", the word "prescribed" shall be substituted;

(b) after sub-section (2), the following proviso shall be inserted, namely:—

"Provided that any regulation, in respect of the salary and allowances payable to and other conditions of service of the officers and other employees of the Authority, made before the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, shall cease to have effect immediately on the notification of rules made under clause (ca) of sub-section (2) of section 35;"

Amendment  
of section  
11.

9. In section 11 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to— 13 of 1885.

(a) make recommendations, either *suo motu* or on a request from the licensor, on the following matters, namely:—

(i) need and timing for introduction of new service provider;

(ii) terms and conditions of licence to a service provider;

(iii) revocation of licence for non-compliance of terms and conditions of licence;

(iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(v) technological improvements in the services provided by the service providers;

(vi) type of equipment to be used by the service providers after inspection of equipment used in the network;

(vii) measures for the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(viii) efficient management of available spectrum;

(b) discharge the following functions, namely:—

(i) ensure compliance of terms and conditions of licence;

(ii) notwithstanding anything contained in the terms and conditions of the licence granted before the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, fix the terms and conditions of inter-connectivity between the service providers;

(iii) ensure technical compatibility and effective inter-connection between different service providers;

(iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(v) lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service;

(vi) lay-down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;



(vii) maintain register of interconnect agreements and of all such other matters as may be provided in the regulations;

(viii) keep register maintained under clause (vii) open for inspection to any member of public on payment of such fee and compliance of such other requirement as may be provided in the regulations;

(ix) ensure effective compliance of universal service obligations;

(c) levy fees and other charges at such rates and in respect of such services as may be determined by regulations;

(d) perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act:

Provided that the recommendations of the Authority specified in clause (a) of this sub-section shall not be binding upon the Central Government:

Provided further that the Central Government shall seek the recommendations of the Authority in respect of matters specified in sub-clauses (i) and (ii) of clause (a) of this sub-section in respect of new licence to be issued to a service provider and the Authority shall forward its recommendations within a period of sixty days from the date on which that Government sought the recommendations:

Provided also that the Authority may request the Central Government to furnish such information or documents as may be necessary for the purpose of making recommendations under sub-clauses (i) and (ii) of clause (a) of this sub-section and that Government shall supply such information within a period of seven days from receipt of such request:

Provided also that the Central Government may issue a licence to a service provider if no recommendations are received from the Authority within the period specified in the second proviso or within such period as may be mutually agreed upon between the Central Government and the Authority:

Provided also that if the Central Government having considered that recommendation of the Authority, comes to a *prima facie* conclusion that such recommendation cannot be accepted or needs modifications, it shall, refer the recommendation back to the Authority for its reconsideration, and the Authority may within fifteen days from the date of receipt of such reference, forward to the Central Government its recommendation after considering the reference made by that Government. After receipt of further recommendation if any, the Central Government shall take a final decision."

(b) in sub-section (3), for the words, brackets and figure "under sub-section (1)", the words, brackets and figures "under sub-section (1) or sub-section (2)" shall be substituted.

10. In section 13 of the principal Act, the following proviso shall be inserted, namely:—

Amendment  
of section  
13.

"Provided that no direction under sub-section (4) of section 12 or under this section shall be issued except on the matters specified in clause (b) of sub-section (1) of section 11."

Substitution  
of new  
Chapter for  
Chapter IV.

11. For Chapter IV of the principal Act, the following Chapter shall be substituted, namely:—

#### CHAPTER IV

#### APPELLATE TRIBUNAL

Establish-  
ment of  
Appellate  
Tribunal.

14. The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to—

(a) adjudicate any dispute—

(i) between a licensor and a licensee;

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers:

Provided that nothing in this clause shall apply in respect of matters relating to—

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969;

54 of 1969.

(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986;

68 of 1986.

(C) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885;

13 of 1885.

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.

Application  
for settle-  
ment of  
disputes  
and appeals  
to Appellate  
Tribunal.

14A. (1) The Central Government or a State Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute referred to in clause (a) of section 14.

(2) The Central Government or a State Government or a local authority or any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Appellate Tribunal.

(3) Every appeal under sub-section (2) shall be preferred within a period of thirty days from the date on which a copy of the direction or order or decision made by the Authority is received by the Central Government or the State Government or the local authority or the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an application under sub-section (1) or an appeal under sub-section (2), the Appellate Tribunal may, after giving the parties to the dispute or the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the dispute or the appeal and to the Authority, as the case may be.

(6) The application made under sub-section (1) or the appeal preferred under sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application or appeal finally within ninety days from the date of receipt of application or appeal, as the case may be.

Provided that where any such application or appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the application or appeal within the said period.

(7) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness, of any dispute made in any application under sub-section (1), or of any direction or order or decision of the Authority referred to in the appeal preferred under sub-section (2), on its own motion or otherwise, call for the records relevant to disposing of such application or appeal and make such orders as it thinks fit.

14B. (1) The Appellate Tribunal shall consist of a Chairperson and not more than two Members to be appointed, by notification, by the Central Government.

Composition  
of Appellate  
Tribunal.

(2) The selection of Chairperson and Members of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India.

(3) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by the Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Appellate Tribunal with one or two Members of such Tribunal as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson of the Appellate Tribunal, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise its jurisdiction.

(4) Notwithstanding anything contained in sub-section (2), the Chairperson of the Appellate Tribunal may transfer a Member of such Tribunal from one Bench to another Bench.

(5) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member of the Appellate Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson to such Bench as the Chairperson may deem fit.

Qualifications for appointment of Chairperson and Members.

14C. A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he—

(a) in the case of Chairperson, is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court;

(b) in the case of a Member, who has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration.

Term of office.

14D. The Chairperson and every other Member of the Appellate Tribunal shall hold office as such for a term not exceeding three years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of Chairperson, the age of seventy years;

(b) in the case of any other Member, the age of sixty-five years.

Terms and conditions of service.

14E. The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

Vacancies.

14F. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Removal and resignation.

14G. (1) The Central Government may remove from office, the Chairperson or any Member of the Appellate Tribunal, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as the Chairperson or a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member of the Appellate Tribunal shall not be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme



Court on a reference being made to it in this behalf by the Central Government, has, on an enquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the Chairperson or a Member ought on such ground or grounds to be removed.

(3) The Central Government may suspend from office, the Chairperson or a Member of the Appellate Tribunal in respect of whom a reference has been made to the Supreme Court under sub-section (2), until the Central Government has passed an order on receipt of the report of the Supreme Court on such reference.

14H. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

Staff of  
Appellate  
Tribunal.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

(3) The salaries and allowances and other conditions of service of such officers and employees of the Appellate Tribunal shall be such as may be prescribed.

14I. Where Benches are constituted, the Chairperson of the Appellate Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Distribution  
of business  
amongst  
Benches.

14J. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

Power of  
Chairperson  
to transfer  
cases.

14K. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Appellate Tribunal who shall hear the point or points himself and such point or points shall be decided according to the opinion of the majority who have heard the case, including those who first heard it.

Decision to  
be by  
majority.

14L. The Chairperson, Members and other officers and employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members  
etc., to be  
public  
servants.

45 of 1860.

14M. All applications, pending for adjudication of disputes before the Authority immediately before the date of establishment of the Appellate Tribunal under this Act, shall stand transferred on that date to such Tribunal:

Transfer  
of pending  
cases.

Provided that all disputes being adjudicated under the provisions of Chapter IV as it stood immediately before the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, shall continue to be adjudicated by the Authority in accordance with the provisions contained in that Chapter, till the establishment of the Appellate Tribunal under the said Ordinance:

Provided further that all cases referred to in the first proviso shall be transferred by the Authority to the Appellate Tribunal immediately on its establishment under section 14.

VI-Ex-1-3

Transfer of  
appeals.

14N. (1) All appeals pending before the High Court immediately before the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, shall stand transferred to the Appellate Tribunal on its establishment under section 14.

(2) Where any appeal stands transferred from the High Court to the Appellate Tribunal under sub-section (1),—

(a) the High Court shall, as soon as may be after such transfer, forward the records of such appeal to the Appellate Tribunal; and

(b) the Appellate Tribunal may, on receipt of such records, proceed to deal with such appeal, so far as may be from the stage which was reached before such transfer or from any earlier stage or *de novo* as the Appellate Tribunal may deem fit.

Civil court  
not to have  
jurisdiction.

15. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Procedure  
and powers  
of Appellate  
Tribunal.

16. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure. 5 of 1908.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office; 1 of 1872.

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it, *ex parte*;

(h) setting aside any order of dismissal of any application for default or any order passed by it, *ex parte*; and

(i) any other matter which may be prescribed.

(3) Every proceeding before the Appellate Tribunal shall be deemed to be judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. 45 of 1860.

2 of 1974.

17. The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Right to legal representation.

*Explanation.*— For the purposes of this section,—

38 of 1949. (a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980. (b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

23 of 1959. (c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

5 of 1908.

18. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code.

Appeal to Supreme Court.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against:

Provided that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

19. (1) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

Orders passed by Appellate Tribunal to be executable as a decree.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

20. If any person wilfully fails to comply with the order of the Appellate Tribunal, he shall be punishable with fine which may extend to one lakh rupees and in case of a second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which such default continues.

Penalty for wilful failure to comply with orders of Appellate Tribunal.

1-12  
Amendment  
of section  
23.

GUJARAT GOVERNMENT GAZETTE, EX. 23-2-2000. [PART VI  
12. In section 23 of the principal Act, after sub-section (2), the following *Explanation*  
shall be inserted, namely:—

*"Explanation.—For the removal of doubts it is hereby declared that the decisions of the Authority taken in discharge of its functions under clause (b) of sub-section (1) and sub-section (2) of section 11 and section 13, being matters appealable to the Appellate Tribunal, shall not be subject to audit under this section."*

Amendment  
of section  
35.

13. In section 35 of the principal Act,—

(a) after clause (a), the following clause shall be inserted, namely:—

*"(aa) the allowances payable to the part-time members under sub-section (6A) of section 5;"*

(b) after clause (c), the following clause shall be inserted, namely:—

*"(ca) the salary and allowances and other conditions of service of officers and other employees of the Authority under sub-section (2) of section 10;"*

(c) after clause (d), the following clauses shall be inserted, namely:—

*"(da) the form, the manner of its verification and the fee under sub-section (3) of section 14A;*

*(db) the salary and allowances payable to and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under section 14E;*

*(dc) the salary and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 14H;*

*(dd) any other power of a civil court required to be prescribed under clause (i) of sub-section (2) of section 16;"*

Amendment  
of section  
36.

14. In section 36 of the principal Act, in sub-section (2),—

(a) clause (c) shall be omitted;

(b) in clause (d), for the words, brackets and letter "under clause (l)", the words, brackets and letters "under sub-clause (vii) of clause (b)" shall be substituted;

(c) in clause (e), for the words, brackets and letter "under clause (m)", the words, brackets and letters "under sub-clause (viii) of clause (b)" shall be substituted;

(d) in clause (f), for the word, brackets and letter "under clause (p)", the words and letter "under clause (c)" shall be substituted.

Sd/-  
K. R. NARAYANAN,  
President.

Sd/-  
RAGHBIR SINGH,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

KUM. H. K. JHAVERI,  
Secretary to Government.





**The Gujarat Government Gazette**  
**EXTRAORDINARY**  
**PUBLISHED BY AUTHORITY**

**VOL. XLI] WEDNESDAY, FEBRUARY 23, 2000/ PHALGUNA 3, 1921**

Separate paging is given to this Part in order that it  
 may be filed as a separate compilation.

**PART—VI**

**Acts of Parliament and Ordinances promulgated by the President.**

**LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT**

Sachivalaya, Gandhinagar, 18th February, 2000.

No.RP/10/2000/Ord.-1/2000/E:- The following Ordinance  
 promulgated by the President and published in the Gazette of  
 India, Extra-ordinary, Part II, Section 1, dated the 17th  
 January, 2000 is republished for general information:-

GOVERNMENT OF INDIA

**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS**

**(Legislative Department)**

*New Delhi, the 17th January, 2000/Pausa 27, 1921 (Saka)*

**THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL  
 INSTITUTIONS (AMENDMENT) ORDINANCE, 2000**

No. 1 of 2000

Promulgated by the President in the Fiftieth Year of the  
 Republic of India.

An Ordinance further to amend the Recovery of Debts Due to Banks and Financial  
 Institutions Act, 1993.

WHEREAS Parliament is not in session and the President is satisfied that circumstances  
 exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of  
 the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Recovery of Debts Due to Banks and  
 Financial Institutions (Amendment) Ordinance, 2000.

(2) It shall come into force at once.

Short title  
 and com-  
 mencement.

Substitution  
of  
designation.

2. In the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 51 of 1993. (hereinafter referred to as the principal Act), for the words "the Presiding Officer of the Appellate Tribunal", "the Presiding Officer of an Appellate Tribunal", "the Presiding Officer of a Tribunal or an Appellate Tribunal", wherever they occur, the words "the Chairperson of the Appellate Tribunal", "the Chairperson of an Appellate Tribunal", "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall respectively be substituted.

Amendment  
of  
section 2.

3. In section 2 of the principal Act,—

(i) after clause (e), the following clause shall be inserted, namely:—

'(ea) "Chairperson" means a Chairperson of an Appellate Tribunal appointed under section 9;'

(ii) for clause (g), the following clause shall be substituted, namely:—

'(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;'

(iii) after clause (j), the following clause shall be inserted, namely:—

'(ja) "Presiding Officer" means the Presiding Officer of the Debts Recovery Tribunal appointed under sub-section (1) of section 4;'

Amendment  
of  
section 7.

4. In section 7 of the principal Act,—

(a) in sub-section (1), for the words "with a Recovery Officer", the words "with one or more Recovery Officers" shall be substituted;

(b) in sub-section (2), for the words "The Recovery Officer", the words "The Recovery Officers" shall be substituted;

(c) in sub-section (3), for the words "Recovery Officer", the words "Recovery Officers" shall be substituted.

Amendment  
of section  
8.

5. In section 8 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Notwithstanding anything contained in sub-sections (1) and (2), the Central Government may authorise the Chairperson of an Appellate Tribunal to discharge also the functions of the Chairperson of other Appellate Tribunal."

Amendment  
of section  
13.

6. In section 13 of the principal Act, in the proviso, for the words "the said Presiding Officers shall be varied to their", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal shall be varied to his", shall be substituted.

7. In section 15 of the principal Act,—

Amendment  
of section  
15.

(a) in sub-section (1), in the proviso, for the words "the said Presiding Officer", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall be substituted;

(b) in sub-section (2), for the words "the Presiding Officer concerned", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall be substituted;

(c) in sub-section (3), for the words "the aforesaid Presiding Officer", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall be substituted.

8. After section 17 of the principal Act, the following section shall be inserted, namely:—

Insertion  
of new  
section 17A.

"17A: (1) The Chairperson of an Appellate Tribunal shall exercise general power of superintendence and control over the Tribunals under his jurisdiction including the power of appraising the work and recording the annual confidential reports of Presiding Officers.

Power of  
Chairperson  
of Appellate  
Tribunal.

(2) The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal."

9. For section 19 of the principal Act, the following section shall be substituted, namely:—

Substitution  
of new  
section for  
section 19.

"19. (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction—

Application  
to the  
Tribunal.

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in part, arise.

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has a claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed:

Provided that the fee may be prescribed having regard to the amount of debt to be recovered:

Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of section 31.

(4) On receipt of the application under sub-section (1) or sub-section (2), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The defendant shall, at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence.

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

(7) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.

(8) A defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

(10) The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of such application, make such order as it thinks fit.

(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(13) (A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,—

(i) is about to dispose of the whole or any part of his property; or



(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest.

the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

(14) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(15) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub-section (14).

(16) If an order of attachment is made without complying with the provisions of sub-section (13), such attachment shall be void.

(17) In the case of disobedience of an order made by the Tribunal under sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order—

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending applications before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

(e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.

1 of 1956. (19) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956, the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.

VI-EX-2-2

(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due upto the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(22) the Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated:

Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

Amendment  
of  
section 27.

10. In section 27 of the principal Act, in sub-section (4), after the words "is reduced", the words "or enhanced" shall be inserted.

Amendment  
of section  
28.

11. In section 28 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

"(4A) The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company, any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets."

Substitution  
of new  
section for  
section 30.

12. For section 30 of the principal Act, the following section shall be substituted, namely:—

Appeal  
against the  
order of  
Recovery  
Officer.

"30. (1) Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems

fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 25 to 28 (both inclusive)."

13. In section 31 of the principal Act, in sub-section (2), in clause (b), the words "or *de novo*" shall be omitted.

Amendment  
of section  
31.

14. After section 31 of the principal Act, the following section shall be inserted, namely:—

Insertion of  
new section  
31A.

"31A. (1) Where a decree or order has been passed by any court before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Ordinance, 2000 and has not yet been executed, then, the decree-holder may apply to the Tribunal to pass an order for recovery of the amount.

Power of  
Tribunal to  
issue  
certificate  
of recovery  
in case of  
decree or  
order not  
executed.

(2) On receipt of an application under sub-section (1), the Tribunal may issue a certificate of recovery to a Recovery Officer.

(3) On receipt of a certificate under sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was a certificate in respect of a debt recoverable under this Act."

15. For section 32 of the principal Act, the following section shall be substituted, namely:—

Substitution  
of new  
section  
for section  
32.

"32. The Chairperson of an Appellate Tribunal, the Presiding Officer of a Tribunal, the Recovery Officer and other officers and employees of an Appellate Tribunal and a Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code."

Chairperson,  
Presiding  
Officer  
and staff of  
Appellate  
Tribunal  
and  
Tribunal to  
be public  
servants.

1 of 1986. 16. In section 34 of the principal Act, in sub-section (2), for the words, brackets and figures "and the Sick Industrial Companies (Special Provisions) Act, 1985", the following shall be substituted, namely:—

Amendment  
of  
section 34.

1 of 1986.  
39 of 1989. "the Sick Industrial Companies (Special Provisions) Act, 1985 and the Small Industries Development Bank of India Act, 1989".

17. In section 36 of the principal Act,—

Amendment  
of  
section 36.

(a) in sub-section (2),—

(i) in clause (a), for the words "the Presiding Officers", the words "the Chairpersons, the Presiding Officers" shall be substituted;

(ii) in clause (b), for the words "the Presiding Officer of the Tribunal and Appellate Tribunals", the words "the Chairpersons of Appellate Tribunals and the presiding Officers of the Tribunals" shall be substituted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every notification issued under sub-section (4) of section 1, section 3 and section 8 and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule or both Houses agree that the notification or rule should not be issued or made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule."

Sd/-

K.R. NARAYANAN,  
President.

Sd/-

RAGHBIR SINGH,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

KUM. H.K. JHAVERI,  
Secretary to Government.



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MONDAY, MAY 15, 2000/VAISAKHA-25, 1922

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 15th May, 2000.

No. RP/14/2000/ACT-28/99/E :- The following Act of Parliament is re-published for general information :-

#### GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 17th November, 1999/Kartika 26, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 16th November, 1999 and is hereby published for general information :

#### THE INCOME-TAX (AMENDMENT) ACT, 1999

(Act No. 28 of 1999)

(16th November, 1999)

#### AN ACT

*further to amend the Income-tax Act, 1961.*

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Income-tax (Amendment) Act, 1999.

(2) It shall be deemed to have come into force on the 1st day of July, 1999.

2. In section 80G of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), in sub-section (1), in clause (i), for the words, brackets, figures and letter " in sub-clause (iiia) ", the words, brackets, figures and letter " in sub-clause (i) or in sub-clause (iiia) " shall be substituted with effect from the 1st day of April, 2000.

Short title and  
commence-  
ment.

Amendment  
of section  
80G of Act  
43 of 1961.

Repeal and  
saving.

3. (1) The Income-tax (Amendment) Ordinance, 1999, is hereby repealed. Ord. 7 of 1999.

(2) Notwithstanding such repeal, anything done or any action taken under the Income-tax Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the Income-tax Act, as amended by this Act.

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.

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GOVERNMENT CENTRAL PRESS, GANDHINAGAR.





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## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 15th May, 2000.

No. RP/16/2000/ACT-30/99/E :- The following Act of Parliament is re-published for general information :-

#### GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, (Legislative Department),

New Delhi, the 17th November, 1999/Kartika 26, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 16th November, 1999 and is hereby published for general information :

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ACT, 1999  
(Act No. 30 of 1999) (16th November, 1999)

#### AN ACT

*further to amend the Representation of the People Act, 1951.*

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1.(1) This Act may be called the Representation of the People (Amendment) Act, 1999.

Short title  
and com-  
mencement.

(2). It shall be deemed to have come into force on the 21st day of July, 1999.

2. In the Representation of the People Act, 1951 (hereinafter referred to as the principal Act), in section 60; after clause (b), the following clause shall be inserted, namely :—

Amendment  
of section  
60 of Act 43  
of 1951.

"(c) any person belonging to a class of persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken subject to the fulfilment of such requirements as may be specified in those rules."

Repeal and  
saving.

3. (1) The Representation of the People (Amendment) Ordinance, 1999 is hereby repealed.

Ord.  
8 of 1999.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.





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## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT  
Sachivalaya, Gandhinagar, Dated the 15th May, 2000.

No. RP/17/2000/ACT-31/99/E :- The following Act of Parliament is re-published for general information :-

GOVERNMENT OF INDIA  
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department)  
New Delhi, the 16th December, 1999/Agrahayana 25, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 16th December, 1999 and is hereby published for general information :

THE SECURITIES LAWS (AMENDMENT) ACT, 1999  
(Act No. 31 of 1999) (16th December, 1999)

#### AN ACT

*further to amend the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992.*

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Securities Laws (Amendment) Act, 1999.
- (2) It shall come into force on such date as the Central Government may, by notification in the *Official Gazette*, appoint.

Short title  
and  
commence-  
ment.

Amendment of  
section 2.

2. In section 2 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the principal Act),—

(a) after clause (a), the following clause shall be inserted, namely:—

'(aa) "derivative" includes—

(A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

(B) a contract which derives its value from the prices, or index of prices, of underlying securities;";

(b) in clause (h), after sub-clause (i), the following sub-clauses shall be inserted, namely:—

"(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;".

Insertion of new  
section 18A.

3. After section 18 of the principal Act, the following section shall be inserted, namely:—

Contracts in  
derivative.

"18A. Notwithstanding anything contained in any other law for the time being in force, contracts in derivative shall be legal and valid if such contracts are—

(a) traded on a recognised stock exchange;"

(b) settled on the clearing house of the recognised stock exchange, in accordance with the rules and bye-laws of such stock exchange."

Amendment of  
section 21.

4. In the heading occurring above section 21 of the principal Act, the words "BY PUBLIC COMPANIES" shall be omitted.

Amendment of  
section 22.

5. In section 22 of the principal Act,—

(a) after the words "public company", the words "or collective investment scheme" shall be inserted;

(b) after the word "company", the words "or scheme" shall be inserted.

Amendment of  
section 23.

6. In section 23 of the principal Act, in sub-section (1), after clause (c), the following clause shall be inserted, namely:—

"(d) enters into any contract in derivative in contravention of section 18A or the rules made under section 30."

Amendment of  
section 24.

7. In section 24 of the principal Act, after sub-section (2), in the *Explanation*, for sub-clause (b), the following sub-clause shall be substituted, namely:—

'(b) "director", in relation to—

(i) a firm, means a partner in the firm;

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof."

Insertion of new  
section 27A.

8. After section 27 of the principal Act, the following section shall be inserted, namely:—

Right to receive  
income from  
collective  
investment  
scheme.

"27A. (1) It shall be lawful for the holder of any securities, being units or other instruments issued by the collective investment scheme, whose name appears on the books of the collective investment scheme issuing the said security to receive and retain any income in respect of units or other instruments issued by the collective investment scheme declared by the collective investment scheme in respect thereof for any year, notwithstanding that the said security, being units or

other instruments issued by the collective investment scheme, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by the collective investment scheme from the transfer or has lodged the security and all other documents relating to the transfer which may be required by the collective investment scheme with the collective investment scheme for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the collective investment scheme became due.

*Explanation.*—The period specified in this section shall be extended—

(i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or other instruments issued by the collective investment scheme;

(ii) in case of loss of the transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof; and

(iii) in case of delay in the lodging of any security, being units or other instruments issued by the collective investment scheme, and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.

(2) Nothing contained in sub-section (1) shall affect—

(a) the right of a collective investment scheme to pay any income from units or other instruments issued by the collective investment scheme which has become due to any person whose name is for the time being registered in the books of the collective investment scheme as the holder of the security being units or other instruments issued by the collective investment scheme in respect of which the income in respect of units or other instruments issued by the collective scheme has become due; or

(b) the right of transferee of any security, being units or other instruments issued by the collective investment scheme, to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security being units or other instruments issued by the collective investment scheme in the name of the transferee."

9. For section 29A of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 29A.

"29A. The Central Government may, by order published in the Official Gazette, direct that the powers (except the power under section 30) exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Securities and Exchange Board of India or the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934."

Power to delegate.

2 of 1934.

10. In section 30 of the principal Act, in sub-section (2), for clause (h), the following clause shall be substituted, namely:—

Amendment of section 30.

"(h) the requirements which shall be complied with—

(A) by public companies for the purpose of getting their securities listed on any stock exchange;

(B) by collective investment scheme for the purpose of getting their units listed on any stock exchange;"

11. In the Securities and Exchange Board of India Act, 1992,—

(i) in section 2, in sub-section (1), after clause (b), the following clause shall be inserted, namely:—

'(ba) "collective investment scheme" means any scheme or arrangement which satisfies the conditions specified in section 11AA;';

(ii) after section 11A, the following section shall be inserted, namely:—

"11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which,—

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.

(3) Notwithstanding anything contained in sub-section (2), any scheme or arrangement—

(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

2 of 1912.

(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;

2 of 1934.

(iii) being a contract of insurance to which the Insurance Act, 1938, applies;

4 of 1938.

(iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952;

19 of 1952.

(v) under which deposits are accepted under section 58A of the Companies Act, 1956;

1 of 1956.

(vi) under which deposits are accepted by a company declared as a Nidhi or a Mutual Benefit Society under section 620A of the Companies Act, 1956;

1 of 1956.

(vii) falling within the meaning of chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982;

40 of 1982.

(viii) under which contributions made are in the nature of subscription to a mutual fund,

shall not be a collective investment scheme."

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.

Collective  
investment  
scheme.





# The Gujarat Government Gazette

## EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

### PART - VI

#### Acts of Parliament and Ordinances Promulgated by the President

##### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 15th May, 2000.

No. RP/18/2000/ACT-32/99/E :- The following Act of Parliament is re-published for general information :-

##### GOVERNMENT OF INDIA

##### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 16th December, 1999/Agrahayana 25, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 16th December, 1999 and is hereby published for general information :

THE SECURITIES LAWS (SECOND AMENDMENT) ACT, 1999  
(Act No. 32 of 1999) (16th December, 1999)

##### AN ACT

*further to amend the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996.*

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

#### CHAPTER I

##### PRELIMINARY

1. This Act may be called the Securities Laws.(Second Amendment) Act, 1999.

Short title.

#### CHAPTER II

##### AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

42 of 1956.

2. In section 2 of the Securities Contracts (Regulation) Act, 1956 (hereafter in this Chapter referred to as the principal Act), after clause (g), the following clause shall be inserted, namely:—

Amendment of section 2.

‘(ga) “Securities Appellate Tribunal” means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992;’

15 of 1992.

Insertion of  
new section  
2A.

Interpretation  
of certain  
words and  
expressions.

Amendment of  
section 22.

Insertion of  
new sections  
22A, 22B,  
22C, 22D, 22E  
and 22F.

Right of appeal  
to Securities  
Appellate  
Tribunal against  
refusal of stock  
exchange to list  
securities  
of public  
companies.

3. After section 2 of the principal Act, the following section shall be inserted, namely:—

"2A. Words and expressions used herein and not defined in this Act but defined in the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the same meanings respectively assigned to them in those Acts."

1 of 1956.  
15 of 1992.  
22 of 1996.

4. In section 22 of the principal Act, the following proviso shall be inserted, namely:—

"Provided that no appeal shall be preferred against refusal, omission or failure, as the case may be, under this section on and after the commencement of the Securities Laws (Second Amendment) Act, 1999."

5. After section 22 of the principal Act, the following sections shall be inserted, namely:—

"22A. (1) Where a recognised stock exchange, acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any company, the company shall be entitled to be furnished with reasons for such refusal, and may,—

(a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or

(b) where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (1A) of section 73 of the Companies Act, 1956 (hereafter in this section referred to as the "specified time"), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Securities Appellate Tribunal may, on sufficient cause being shown, allow,

1 of 1956.

\* appeal to the Securities Appellate Tribunal having jurisdiction in the matter against such refusal, omission or failure, as the case may be, and thereupon the Securities Appellate Tribunal may, after giving the stock exchange, an opportunity of being heard,—

(i) vary or set aside the decision of the stock exchange; or

(ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,

and where the Securities Appellate Tribunal sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Securities Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be in such form and be accompanied by such fee as may be prescribed.

(3) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board and parties to the appeal.

(4) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure and  
powers of  
Securities  
Appellate  
Tribunal.

22B. (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

5 of 1908.

5 of 1908.

(2) The Securities Appellate Tribunal shall have, for the purpose of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it *ex parte*;
- (g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; and
- (h) any other matter which may be prescribed.

45 of 1860.

2 of 1974.

(3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

22C. The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Right to legal representation.

*Explanation.*—For the purposes of this section,—

38 of 1949.

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980.

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

23 of 1959.

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

36 of 1963.

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

22D. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.

Limitation.

22E. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Civil court not to have jurisdiction.

22F. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High Court within sixty days from the date of

Appeal to High Court.

communication of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.'

Amendment of  
section 23.

6. In section 23 of the principal Act, in sub-section (2), after the word and figures "section 22", the words "or with the orders of the Securities Appellate Tribunal" shall be inserted.

Amendment of  
section 30.

7. In section 30 of the principal Act, in sub-section (2), for clause (ha), the following clause shall be substituted, namely:—

"(ha) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 22A and the fees payable in respect of such appeal;"

### CHAPTER III

#### AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

Amendment of  
section 15K.

8. In section 15K of the Securities and Exchange Board of India Act, 1992 (hereafter in this Chapter referred to as the principal Act), in sub-section (1), after the words "under this Act", the words "or any other law for the time being in force" shall be inserted.

15 of 1992.

Amendment of  
section 15T.

9. In section 15T of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Save as provided in sub-section (2), any person aggrieved,—

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer under this Act, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.";

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) No appeal shall lie to the Securities Appellate Tribunal from an order made—

(a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999;

(b) by an adjudicating officer, with the consent of the parties.";

(c) in sub-section (3), for the words "a copy of the order made by the adjudicating officer", the words "a copy of the order made by the Board or the adjudicating officer, as the case may be," shall be substituted;

(d) in sub-section (5), for the word "parties", the words "Board, the parties" shall be substituted.

Substitution of  
new section for  
section 15V.

10. For section 15V of the principal Act, the following shall be substituted, namely:—

Right to legal  
representation.

'15V. The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.



*Explanation.*—For the purposes of this section,—

38 of 1949.

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980.

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

23 of 1959.

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

11. In section 20 of the principal Act, in sub-section (1), for the words "an order of the Board made", the words, brackets and figures "an order of the Board made, before the commencement of the Securities Laws (Second Amendment) Act, 1999," shall be substituted.

Amendment of section 20.

12. In section 20A of the principal Act,—

Amendment of section 20A.

(a) for the word "Board" wherever it occurs, the words "Board or the adjudicating officer" shall be substituted;

(b) for the word and figures "section 20", the words, figures and letter "section 15T or section 20" shall be substituted.

#### CHAPTER IV

##### AMENDMENTS TO THE DEPOSITORIES ACT, 1996

22 of 1996.

13. In section 2 of the Depositories Act, 1996 (hereafter in this Chapter referred to as the principal Act), after clause (k), the following clause shall be inserted, namely:—

Amendment of section 2.

15 of 1992.

(ka) "Securities Appellate Tribunal" means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992;

14. In section 23 of the principal Act, in sub-section (1), for the words "an order of the Board made", the words, brackets and figures "an order of the Board made before the commencement of the Securities Laws (Second Amendment) Act, 1999" shall be substituted.

Amendment of section 23.

15. After section 23 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 23A, 23B, 23C, 23D, 23E and 23F.

23A. (1) Save as provided in sub-section (2), any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the regulations made thereunder, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Appeal to Securities Appellate Tribunal.

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made by the Board with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board is received by the person referred to in sub-section (1) and it shall be in such form and be accompanied by such fee as may be prescribed:

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Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board and parties to the appeal.

(6) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure and  
powers of  
Securities  
Appellate  
Tribunal.

23B. (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

5 of 1908.

(2) The Securities Appellate Tribunal shall have, for the purpose of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; and

(h) any other matter which may be prescribed.

(3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

Right to legal  
representation.

23C. The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

*Explanation.*—For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

38 of 1949.

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980.

23 of 1959.

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

36 of 1963.

23D. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.

Limitation.

23E. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Civil court not to have jurisdiction.

23F. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order:

Appeal to High Court.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

16. In section 24 of the principal Act, in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

Amendment of section 24.

"(d) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23A and the fees payable in respect of such appeal."

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.



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# The Gujarat Government Gazette EXTRAORDINARY

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## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT  
Sachivalaya, Gandhinagar, Dated the 15th May, 2000.

No. RP/19/2000/ACT- 33/99/E :- The following Act of Parliament is re-published for general information :-

GOVERNMENT OF INDIA  
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department)  
New Delhi, the 16th December, 1999/Agrahayana 25, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 16th December, 1999 and is hereby published for general information :

THE INDIAN MAJORITY (AMENDMENT) ACT, 1999  
(Act No. 33 of 1999) (16th December, 1999)

#### AN ACT

*further to amend the Indian Majority Act, 1875.*

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. This Act may be called the Indian Majority (Amendment) Act, 1999.

Short title.

9 of 1875.

2. In the Indian Majority Act, 1875 (hereinafter referred to as the principal Act), in the preamble, for the words "to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority that now exists", the words "to specify the age of majority" shall be substituted.

Amendment of preamble.

3. In section 1 of the principal Act, the word "Indian" shall be omitted.

Amendment of section 1.

7-2

Substitution  
of new  
section for  
sections 3  
and 4.

4. For sections 3 and 4 of the principal Act, the following section shall be substituted, namely :—

Age of  
majority of  
persons  
domiciled in  
India.

"3. (1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day."

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.





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### PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 22nd May, 2000.

No. RP/20/2000/ACT-34/99/E:—The following Act of Parliament is re-published for general information:—

GOVERNMENT OF INDIA,  
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,  
(Legislative Department),  
New Delhi, the 16th December, 1999/Agrahayana 25, 1921 (SAKA)

The following Act of Parliament received the assent of the President on the 16th December, 1999 and is hereby published for general information:

### THE ADMINISTRATORS-GENERAL (AMENDMENT) ACT, 1999

(Act No. 34 of 1999)

AN ACT

(16th December, 1999)

further to amend the Administrators-General Act, 1963.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

- |  |   |
|--|---|
| 1. This Act may be called the Administrators-General (Amendment) Act, 1999.  | Short title.  |
| 2. In section 9, section 10, section 29 and section 36 of the Administrators-General Act, 1963, for the words "fifty thousand", wherever they occur, the words "two lakhs" shall be substituted. | Amendment of sections 9, 10, 29 and 36 of Act 45 of 1963. |

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.

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### PART - VI

Acts of Parliament and Ordinances Promulgated by the President  
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT  
Sachivalaya, Gandhinagar, 22nd May, 2000

No. RP/21/2000/ACT-35/99/E:—The following Act of Parliament is re-published for general information:—

GOVERNMENT OF INDIA,  
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department),  
New Delhi, the 16th December, 1999/Agrahayana 25, 1921 (SAKA)

The following Act of Parliament received the assent of the President on the 16th December, 1999 and is hereby published for general information:

#### THE SPECIAL PROTECTION GROUP (AMENDMENT) ACT, 1999

(Act No. 35 of 1999)

(16th December, 1999)

#### AN ACT

*further to amend the Special Protection Group Act, 1988.*

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Special Protection Group (Amendment) Act, 1999.
- (2) It shall be deemed to have come into force on the 18th day of November, 1999.

Short title and  
commence-  
ment.

Amendment  
of section 4.

34 of 1988.

2. In section 4 of the Special Protection Group Act, 1988 (hereinafter referred to as the principal Act), for sub-section (I), the following sub-sections shall be substituted, namely:—

“(I) There shall be an armed force of the Union called the Special Protection Group for providing proximate security to—

- (i) the Prime Minister and the members of his immediate family; and
- (ii) any former Prime Minister or to the members of his immediate family—

(a) for a period of ten years from the date on which the former Prime Minister ceased to hold the office of the Prime Minister; and

(b) for any period beyond the period of ten years referred to in sub-clause (a) in a case where the level of threat faced by the former Prime Minister or by any member of his immediate family is of such a nature that such level of threat justifies the provision of proximate security to such former Prime Minister or such member of his immediate family, as the case may be:

Provided that, while assessing the level of threat, the Central Government shall take into account the following factors, namely:—

(A) that the threat emanates from any militant or terrorist organisation; and

(B) that the threat is of a grave and continuing nature:

Provided further that the Central Government shall assess the level of threat periodically in such a manner that not more than twelve months shall elapse between two consecutive assessments.

(IA) Notwithstanding anything contained in sub-section (I),—

(a) any former Prime Minister or any member of the immediate family of the Prime Minister or of a former Prime Minister may decline proximate security;

(b) where the proximate security is withdrawn from a former Prime Minister, whether before or after the commencement of the Special Protection Group (Amendment) Act, 1999, such proximate security shall also stand withdrawn from the immediate family members of such former Prime Minister:

Provided that where the level of threat faced by any member of the immediate family of a former Prime Minister warrants proximate security or any other security, such security shall be provided to that member.”

Repeal and  
saving.

3. (I) The Special Protection Group (Amendment) Ordinance, 1999, is hereby repealed.

Ord.  
10 of 1999.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.



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# The Gujarat Government Gazette EXTRAORDINARY

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## PART - VI

Acts of Parliament and Ordinances Promulgated by the President  
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT  
Sachivalaya, Gandhinagar, 22nd May, 2000.

No. RP/22/2000/ACT-36/99/E:—The following Act of Parliament is re-published for general information:—

GOVERNMENT OF INDIA,  
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department),  
New Delhi, the 20th December, 1999/Agrahayana 29, 1921 (SAKA)

The following Act of Parliament received the assent of the President on the 17th December, 1999 and is hereby published for general information:

### THE NOTARIES (AMENDMENT) ACT, 1999

(Act No. 36 of 1999)

An Act

(17th December, 1999)

further to amend the Notaries Act, 1952.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

- |             |   |                         |
|-------------|---|-------------------------|
| 53 of 1952. | 1. This Act may be called the Notaries (Amendment) Act, 1999.   | Short title.            |
| 25 of 1961. | 2. In section 2 of the Notaries Act, 1952 (hereinafter referred to as the principal Act), for clause (c) the following clause shall be substituted, namely:—<br>(c) "legal practitioner" means an advocate entered in any roll under the provisions of the Advocates Act, 1961. | Amendment of section 2. |
|             | 3. In section 5 of the principal Act,—<br>(a) in sub-section (1),—<br>(i) in the opening portion, for the word "shall", the word "may" shall be substituted;<br>(ii) in clause (b), for the words "three years", the words "five years" shall be substituted;                   | Amendment of section 5. |

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The Government appointing the notary, may, on receipt of an application and the prescribed fee, renew the certificate of practice of any notary for a period of five years at a time."

Amendment of  
section 8.

4. In section 8 of the principal Act, in sub-section (1),—

(a) after clause (h), the following clauses shall be inserted, namely:—

"(ha) act as a Commissioner to record evidence in any civil or criminal trial if so directed by any court or authority;

(hb) act as an arbitrator, mediator or conciliator, if so required;"

Amendment of  
section 10.

5. In section 10 of the principal Act,—

(i) in clause (d), the word "or" shall be inserted at the end;

(ii) after clause (d), the following clauses shall be inserted, namely:—

"(e) is convicted by any court for an offence involving moral turpitude; or

(f) does not get his certificate of practice renewed."

Amendment of  
section 12.

6. In section 12 of the principal Act, for the words "three months", the words "one year" shall be substituted.

Amendment of  
section 15.

7. In section 15 of the principal Act, in sub-section (2), for clause (c), the following clause shall be substituted, namely:—

"(c) the fees payable for appointment as a notary and for the issue and renewal of a certificate of practice, area of practice or enlargement of area of practice and exemption whether wholly or in part, from such fees in specified classes of cases;"

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.





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### PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 22nd May, 2000.

No. RP/13/2000/ACT-38/99/E.—The following Act of Parliament is re-published for general information:—

GOVERNMENT OF INDIA:

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department),

New Delhi, the 20th December, 1999/Agrahayana 29, 1921 (SAKA)

The following Act of Parliament received the assent of the President on the 18th December, 1999 and is hereby published for general information:

THE MINES AND MINERALS (REGULATION AND DEVELOPMENT) (AMENDMENT) ACT, 1999

(Act No. 38 of 1999)

An Act

(18th December, 1999)

furth<sup>r</sup> to amend the Mines and Minerals (Regulation and Development) Act, 1957.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. This Act may be called the Mines and Minerals (Regulation and Development) Amendment Act, 1999.

Short title.

67 of 1957.

2. In the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the principal Act), in the long title, for the words "regulation of mines and the development of minerals", the words "development and regulation of mines and minerals" shall be substituted.

Amendment of long title.

3. In section 1 of the principal Act, in sub-section (1), for the brackets and words "(Regulation and Development)", the brackets and words "(Development and Regulation)" shall be substituted.

Amendment of section 1.

Amendment of  
section 3.

4. In section 3 of the principal Act,—

(a) in clause (h), the word "and" occurring at the end shall be omitted;

(b) after clause (h), the following clauses shall be inserted, namely:—

'(ha) "reconnaissance operations" means any operations undertaken for preliminary prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping, but does not include pitting, trenching, drilling (except drilling of boreholes on a grid specified from time to time by the Central Government) or sub-surface excavation;

(hb) "reconnaissance permit" means a permit granted for the purpose of undertaking reconnaissance operations; and'.

Amendment of  
section 4.

5. In section 4 of the principal Act,—

(a) in sub-section (I),—

(i) for the portion beginning with the words "No person shall undertake any prospecting or mining operations" and ending with the words "granted under this Act and the rules made thereunder", the following shall be substituted, namely:—

"No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder";

(ii) in the second proviso, for the words "the Atomic Minerals Division", the words "the Atomic Minerals Directorate for Exploration and Research" shall be substituted;

(b) after sub-section (I), the following sub-section shall be inserted, namely:—

"(IA) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.";

(c) in sub-section (2), for the words "No prospecting licence or mining lease", the words "No reconnaissance permit, prospecting licence or mining lease" shall be substituted;

(d) in sub-section (3), for the portion beginning with the words "undertake prospecting or mining operations" and ending with the words "under any prospecting licence or mining lease", the following shall be substituted, namely:—

"undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease".

Amendment of  
section 4A.

6. In section 4A of the principal Act, proviso to sub-section (2), shall be omitted.

Amendment of  
section 5.

7. In section 5 of the principal Act,—

(a) in sub-section (I), for the words "prospecting licence or mining lease", wherever they occur, the words "reconnaissance permit, prospecting licence or mining lease" shall be substituted;

(b) in sub-section (2), for clauses (a) and (b), the following clauses shall be substituted, namely:—

"(a) there is evidence to show that the area for which the lease is applied for has been prospected earlier or the existence of mineral contents therein has been established otherwise than by means of prospecting such area; and

(b) there is a mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned."

8. In section 6 of the principal Act,—

Amendment of  
section 6.

(a) in sub-section (1),—

(i) after the words "associated minerals", the words "in a State" shall be inserted;

(ii) after clause (a), the following clause shall be inserted, namely:—

"(aa) one or more reconnaissance permit covering a total area of ten thousand square kilometres:

Provided that the area granted under a single reconnaissance permit shall not exceed five thousand square kilometres; or";

(iii) for clause (c), the following clause shall be substituted, namely:—

"(c) any reconnaissance permit, mining lease or prospecting licence in respect of any area which is not compact or contiguous:

Provided that if the State Government is of opinion that in the interests of the development of any mineral, it is necessary so to do, it may, for reasons to be recorded in writing, permit any person to acquire a reconnaissance permit, prospecting licence or mining lease in relation to any area which is not compact or contiguous;";

(b) in sub-sections (2) and (3), for the words "prospecting licence or mining lease", wherever they occur, the words "reconnaissance permit, prospecting licence or mining lease" shall be substituted.

9. In section 7 of the principal Act,—

Amendment of  
section 7.

(a) in sub-section (1), for the words "a prospecting licence", the words "a reconnaissance permit or prospecting licence" shall be substituted;

(b) in the second proviso to sub-section (2), for the words "a mineral included in", the words and letters "a mineral included in Part A and Part B to" shall be substituted.

10. In section 8 of the principal Act,—

Amendment of  
section 8.

(a) proviso to sub-section (2) shall be omitted;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) Notwithstanding anything contained in sub-section (2), if the State Government is of opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, authorise the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case.

(4) Notwithstanding anything contained in sub-section (2) and sub-section (3), no mining lease granted in respect of mineral specified in Part A or Part B of the First Schedule shall be renewed except with the previous approval of the Central Government."

Amendment of  
section 10.

11. In section 10 of the principal Act,—

(a) in sub-section (1), for the words "a prospecting licence or a mining lease", the words "a reconnaissance permit, prospecting licence or mining lease" shall be substituted;

(b) in sub-section (3), for the words "licence or lease", the words "permit, licence or lease" shall be substituted.

Substitution of  
new section  
for section 11.

12. For section 11 of the principal Act, the following section shall be substituted, namely:—

Preferential  
right of certain  
persons.

"11. (1) Where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee shall have a preferential right for obtaining a prospecting licence or mining lease, as the case may be, in respect of that land over any other person:

Provided that the State Government is satisfied that the permit holder or the licensee, as the case may be,—

(a) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;

(b) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(c) has not become ineligible under the provisions of this Act; and

(d) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period, as may be extended by the said Government.

(2) Subject to the provisions of sub-section (1), where the State Government has not notified in the Official Gazette the area for grant of reconnaissance permit or prospecting licence or mining lease, as the case may be, and two or more persons have applied for a reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have the preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later:

Provided that where an area is available for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, and the State Government has invited applications by notification in the Official Gazette for grant of such permit, licence or lease, all the applications received during the period specified in such notification and the applications which had been received prior to the publication of such notification in respect of the lands within such area and had not been disposed of, shall be deemed to have been received on the same day for the purposes of assigning priority under this sub-section:

Provided further that where any such applications are received on the same day, the State Government, after taking into consideration the matter specified in sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(3) The matters referred to in sub-section (2) are the following:—

(a) any special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining operations, as the case may be, possessed by the applicant;



- (b) the financial resources of the applicant;
- (c) the nature and quality of the technical staff employed or to be employed by the applicant;
- (d) the investment which the applicant proposes to make in the mines and in the industry based on the minerals;
- (e) such other matters as may be prescribed.

(4) Subject to the provisions of sub-section (1), where the State Government notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, all the applications received during the period as specified in such notification, which shall not be less than thirty days, shall be considered simultaneously as if all such applications have been received on the same day and the State Government, after taking into consideration the matters specified in sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(5) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the State Government may, for any special reasons to be recorded, grant a reconnaissance permit, prospecting licence or mining lease, as the case may be, to an applicant whose application was received later in preference to an application whose application was received earlier.

Provided that in respect of minerals specified in the First Schedule, prior approval of the Central Government shall be obtained before passing any order under this sub-section."

13. In section 12 of the principal Act, in sub-section (1), for clauses (c) and (d), the following clauses shall be substituted, namely:—

- "(c) a register of applications for mining leases;
- (d) a register of mining leases;
- (e) a register of applications for reconnaissance permits; and
- (f) a register of reconnaissance permits;"

Amendment of section 12.

14. In section 13 of the principal Act,—

(a) in sub-section (1), for the words "prospecting licences and mining leases", the words "reconnaissance permits, prospecting licences and mining leases" shall be substituted;

Amendment of section 13.

(b) in sub-section (2),—

(i) in clauses (a), (e) and (i), for the words "prospecting licences or mining leases", the words "reconnaissance permits, prospecting licences or mining leases" shall respectively be substituted;

(ii) in clause (f), for the words "a licence or lease", the words "a permit, licence or lease" shall be substituted;

(iii) in clauses (f) and (i), for the words "a prospecting licence or a mining lease", the words "a reconnaissance permit, a prospecting licence or a mining lease" shall respectively be substituted;

(iv) in clause (g), for the words "prospecting licence or mining lease", the words "reconnaissance permit, prospecting licence or mining lease" shall



be substituted;

(v) in clause (j), for the words "prospecting or mining operations", the words "reconnaissance, prospecting or mining operations" shall be substituted;

(vi) in clause (p), for the words "prospecting licences", the words "reconnaissance permits or prospecting licences" shall be substituted.

Amendment of  
section 17.

15. In section 17 of the principal Act,—

(a) in sub-section (2),—

(i) for the words "prospecting or mining operations", wherever they occur, the words "reconnaissance, prospecting or mining operations" shall be substituted;

(ii) for the words "prospecting licence or mining lease", the words "reconnaissance permit, prospecting licence or mining lease" shall be substituted;

(b) in sub-section (3),—

(i) for the words "prospecting or mining operations", wherever they occur, the words "reconnaissance, prospecting or mining operations" shall be substituted;

(ii) for the words "prospecting fee", the words "reconnaissance permit fee or prospecting fee" shall be substituted;

(iii) for the words "prospecting licence or mining lease", the words "reconnaissance permit, prospecting licence or mining lease" shall be substituted;

(c) in sub-section (4), for the words "prospecting licence or mining lease", the words "reconnaissance permit, prospecting licence or mining lease" shall be substituted.

Amendment of  
section 19.

16. In section 19 of the principal Act,—

(a) for the words "prospecting licence or mining lease", wherever they occur, the words "reconnaissance permit, prospecting licence or mining lease" shall be substituted;

(b) in the *Explanation*, for the words "licences or leases", the words "permits, licences or leases" shall be substituted.

Amendment of  
section 21.

17. In section 21 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both.";

(b) for sub-section (4), the following sub-sections shall be substituted, namely:—

"(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized

under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court."

18. In section 23B of the principal Act,—

(a) after the words "authorised by the Central Government", the words "or a State Government, as the case may be," shall be inserted;

(b) after the words "in any place", the words "or vehicle" shall be inserted.

19. After section 23B of the principal Act, the following section shall be inserted, namely:—

"23C. (1) The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) establishment of check-posts for checking of minerals under transit;

(b) establishment of weigh-bridges to measure the quantity of mineral being transported;

(c) regulation of mineral being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;

(d) inspection, checking and search of minerals at the place of excavation or storage or during transit;

(e) maintenance of registers and forms for the purposes of these rules;

(f) the period within which and the authority to which applications for revision of any order passed by any authority be preferred under any rule made under this section and the fees to be paid therefor and powers of such authority for disposing of such applications; and

(g) any other matter which is required to be, or may be, prescribed for the purpose of prevention of illegal mining, transportation and storage of minerals.

(3) Notwithstanding anything contained in section 30, the Central Government shall have power to revoke any order passed by a State Government or any of its authorised officers or any authority under the rules made under sub-sections (1) and (2)."

20. In section 24 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "Central Government", the words "Central Government or a State Government" shall be substituted;

(ii) the words "or special" shall be omitted;

(b) in sub-section (2), for the words "Central Government", the words "Central Government or a State Government" shall be substituted.

21. In section 24A of the principal Act,—

(a) in sub-section (1),—

(i) for the words "prospecting licence or mining lease", the words

Amendment of section 23B.

Insertion of new section 23C.

Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals.

Amendment of section 24.

Amendment of section 24A.



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## PART - VI

Acts of Parliament and Ordinances Promulgated by the President  
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar, 6th June, 2000.

No. RP/24/2000/ACT-39/99/E.—The following Act of Parliament is re-published for general information:—

GOVERNMENT OF INDIA  
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department),  
New Delhi, the 29th December, 1999/Pausa 8, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 29th December, 1999 and is hereby published for general information:

### THE MARRIAGE LAWS (AMENDMENT) ACT, 1999

(Act No. 39 of 1999)

(29th December, 1999)

#### AN ACT

*further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954.*

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. This Act may be called the Marriage Laws (Amendment) Act, 1999.
2. In section 5 of the Hindu Marriage Act, 1955, in clause (ii), in sub-clause (c), the words "or epilepsy" shall be omitted.

Short title.

Amendment of  
section 5 of Act  
25 of 1955.

Amendment of  
section 4 of Act  
43 of 1954.

3. In section 4 of the Special Marriage Act, 1954, in clause (b), in sub-clause (iii), the words "or epilepsy" shall be omitted.

**DR. RAGHBIR SINGH,**  
Secretary to the Government of India,

By order and in the name of the Governor of Gujarat,

**Kum. H. K. JHAVERI,**  
Secretary to Government.

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## PART - VI

Acts of Parliament and Ordinances Promulgated by the President  
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 6th June, 2000.

No. : RP/25/2000/Act-40/99/E : The following Act of Parliament is re-published for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,  
(Legislative Department)

New Delhi, the 29th December, 1999 / Pausa 8, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 29th December, 1999 and is hereby published for general information :-

THE CENTRAL INDUSTRIAL SECURITY FORCE (AMENDMENT  
AND VALIDATION) ACT, 1999.

(Act No. 40 of 1999)

(29th December, 1999)

AN ACT

*further to amend the Central Industrial Security Force Act, 1968, and to validate certain revision petitions disposed of under the rules made under the said Act.*

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. This Act may be called the Central Industrial Security Force (Amendment and Validation) Act, 1999.

Short title.

50 of 1968.

2. In the Central Industrial Security Force Act, 1968 (hereinafter referred to as the principal Act), for the long title, the following long title shall be substituted, namely:—

Amendment of long title.

“An Act to provide for the constitution and regulation of an armed force of the Union for the better protection and security of industrial undertakings owned by the Central Government, certain other industrial undertakings, employees of all such undertakings and to provide technical consultancy services to industrial establishments in the private sector and for matters connected therewith.”



Amendment  
of section 2.

3. In section 2 of the principal Act, in sub-section (1), after clause (c), the following clause shall be inserted, namely:—

“(ca) “industrial establishment” means an industrial undertaking or a company as defined under section 3 of the Companies Act, 1956 or a firm registered under section 59 of the Indian Partnership Act, 1932 which is engaged in any industry, or in any trade, business or service;”

1 of 1956.  
9 of 1932.

Amendment  
of section 3.

4. In section 3 of the principal Act, in sub-section (1), the words “and to perform such other duties as may be entrusted to it by the Central Government” shall be inserted at the end.

Amendment  
of section 8.

5. In section 8 of the principal Act,—

(i) in clause (i), after the word “remove”, the words, “order for compulsory retirement of” shall be inserted;

(ii) in clause (ii), after sub-clause (c), the following sub-clauses shall be inserted, namely:—

“(d) withholding of increment of pay with or without cumulative effect;

(e) withholding of promotion;

(f) censure.”

Amendment  
of section 9.

6. In section 9 of the principal Act,—

(i) in sub-section (1), for the words, brackets and figure “subject to the provisions of sub-section (3)”, the words, brackets, figures and letters “subject to the provisions of sub-section (2A), sub-section (2B) and sub-section (3)” shall be substituted;

(ii) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) Any enrolled member of the Force aggrieved by an order passed in appeal under sub-section (1) may, within a period of six months from the date on which the order is communicated to him, prefer a revision petition against the order to such authority as may be prescribed and in disposing of the revision petition, the said authority shall follow such procedure as may be prescribed.

(2B) The authority, as may be prescribed for the purpose of this sub-section, on a revision petition preferred by an aggrieved enrolled member of the Force or *suo moto*, may call for, within a prescribed period, the records of any proceeding under section 8 or sub-section (2) or sub-section (2A) and such authority may, after making inquiry in the prescribed manner, and subject to the provisions of this Act, pass such order thereon as it thinks fit.”

(iii) in sub-section (3), for the words, figures and brackets “under section 8 or under sub-section (2)”, the words, figures, brackets and letters “under section 8, sub-section (2), sub-section (2A) or sub-section (2B)” shall be substituted.

Amendment  
of section 10.

7. In section 10 of the principal Act, after clause (e), the following clauses shall be inserted, namely:—

“(f) to provide technical consultancy services relating to security of any private sector industrial establishments under section 14A;

(g) to protect and safeguard the organisations owned or funded by the Government and the employees of such organisations as may be entrusted to him by the Central Government;

(h) any other duty which may be entrusted to him by the Central Government from time to time.”

8. After section 14 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 14A.

"14A. (1) Subject to any general directions which may be issued by the Central Government, it shall be lawful for the Director-General, on a request received from the Managing Director of an industrial establishment in the private sector or any other person authorised by him in this behalf, to direct the members of the Force to provide technical consultancy services relating to security, to such industrial establishments in such manner and on payment of such fee as may be prescribed.

Technical Consultancy Service to industrial establishments.

(2) The fee received under sub-section (1) shall be credited to the Consolidated Fund of India.

*Explanation.*—For the purposes of this section, the expression "Managing Director", in relation to an industrial establishment, means the person (whether called general manager, manager, chief executive officer or a partner of a firm or by any other name) who exercises control over the affairs of the establishment."

9. In section 22 of the principal Act, in sub-section (2),—

(i) after clause (ggg), the following clauses shall be inserted, namely:—

"(gggg) prescribing authority under sub-section (2A) of section 9 and the procedure to be followed by such authority in disposing of the revision petition;

(ggggg) prescribing authority under sub-section (2B) of section 9, the period within which such authority may call for the records and the manner in which such authority may make inquiry;"

(ii) in clause (h), the word "and" occurring at the end shall be omitted;

(iii) after clause (h), the following clause shall be inserted, namely:—

"(hh) the manner in which and the fee on payment of which the technical consultancy services shall be provided under sub-section (1) of section 14A; and"

10. Notwithstanding any judgment, decree or order of any court to the contrary, rule 49 of the Central Industrial Security Force Rules, 1969 published with the notification of the Government of India in the Ministry of Home Affairs number S.O. 4632, dated the 12th November, 1969 shall be deemed to be, and to have always been, made under the principal Act as amended by this Act as if the principal Act as so amended had been in force at all material times before the commencement of this Act and accordingly the disposal of any revision petition under the said rule 49 before the commencement of this Act or any order made or purporting to have been made or any action or thing taken or done in or under such petition shall not be deemed to be invalid or ever to have become invalid merely on the ground that the Central Government had no power under the principal Act to make the said rule 49.

Validation of the disposal of certain revision petitions.

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



सत्यमेव जयते

# The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

## PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 6th June, 2000.

No. : RP/26/2000/Act-41/99/E .- The following Act of Parliament is re-published for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 29th December, 1999 / Pausa 8, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 29th December, 1999 and is hereby published for general information :-

THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY  
ACT, 1999.

(Act No. 41 of 1999)

(29th December, 1999)

AN ACT

*to provide for the establishment of an Authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto and further to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalisation) Act, 1972.*

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

### CHAPTER I

#### PRELIMINARY

1, (1) This Act may be called the Insurance Regulatory and Development Authority Act, 1999.

(2) It extends to the whole of India.

Short title,  
extent and  
commencement.



(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

#### Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "appointed day" means the date on which the Authority is established under sub-section (1) of section 3;

(b) "Authority" means the Insurance Regulatory and Development Authority established under sub-section (1) of section 3;

(c) "Chairperson" means the Chairperson of the Authority;

(d) "Fund" means the Insurance Regulatory and Development Authority Fund constituted under sub-section (1) of section 16;

(e) "Interim Insurance Regulatory Authority" means the Insurance Regulatory Authority set up by the Central Government through Resolution No. 17(2)/94-Ins.-V, dated the 23rd January, 1996;

(f) "intermediary or insurance intermediary" includes insurance brokers, re-insurance brokers, insurance consultants, surveyors and loss assessors;

(g) "member" means a whole-time or a part-time member of the Authority and includes the Chairperson;

(h) "notification" means a notification published in the Official Gazette;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "regulations" means the regulations made by the Authority.

(2) Words and expressions used and not defined in this Act but defined in the Insurance Act, 1938 or the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 shall have the meanings respectively assigned to them in those Acts.

4 of 1938.

31 of 1956.

57 of 1972.

## CHAPTER II

### INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

Establishment  
and incorpora-  
tion of  
Authority.

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, an Authority to be called "the Insurance Regulatory and Development Authority".

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Authority shall be at such place as the Central Government may decide from time to time.

(4) The Authority may establish offices at other places in India.

**4. The Authority shall consist of the following members, namely:—**Composition  
of Authority.

- (a) a Chairperson;
- (b) not more than five whole-time members;
- (c) not more than four part-time members,

to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority:

Provided that the Central Government shall, while appointing the Chairperson and the whole-time members, ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science, respectively.

**5. (1) The Chairperson and every other whole-time member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:**Tenure of  
office of  
Chairperson  
and other  
members.

Provided that no person shall hold office as a Chairperson after he has attained the age of sixty-five years:

Provided further that no person shall hold office as a whole-time member after he has attained the age of sixty-two years.

(2) A part-time member shall hold office for a term not exceeding five years from the date on which he enters upon his office.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), a member may—

(a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 6.

**6. (1) The Central Government may remove from office any member who—**Removal from  
office.

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as a member; or

(c) has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position as to render his continuation in office detrimental to the public interest.

(2) No such member shall be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

**7. (1) The salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members shall be such as may be prescribed.**Salary and  
allowances of  
Chairperson  
and members.

(2) The part-time members shall receive such allowances as may be prescribed.

(3) The salary, allowances and other conditions of service of a member shall not be varied to his disadvantage after appointment.



Bar on future  
employment of  
members.

8. The Chairperson and the whole-time members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept—

(a) any employment either under the Central Government or under any State Government; or

(b) any appointment in any company in the insurance sector.

Administrative  
powers of  
Chairperson.

9. The Chairperson shall have the powers of general superintendence and direction in respect of all administrative matters of the Authority.

Meetings of  
Authority.

10. (1) The Authority shall meet at such time and places and shall observe such rules and procedures in regard to transaction of business at its meetings (including quorum at such meetings) as may be determined by the regulations.

(2) The Chairperson, or if for any reason he is unable to attend a meeting of the Authority, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the members present and voting; and in the event of an equality of votes, the Chairperson, or in his absence, the person presiding shall have a second or casting vote.

(4) The Authority may make regulations for the transaction of business at its meetings.

Vacancies, etc.,  
not to  
invalidate  
proceedings of  
Authority.

11. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Officers and  
employees of  
Authority.

12. (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The terms and other conditions of service of officers and other employees of the Authority appointed under sub-section (1) shall be governed by the regulations made under this Act.

### CHAPTER III

#### TRANSFER OF ASSETS, LIABILITIES, ETC., OF INTERIM INSURANCE REGULATORY AUTHORITY

Transfer of  
assets,  
liabilities, etc.,  
of Interim  
Insurance  
Regulatory  
Authority.

13. On the appointed day,—

(a) all the assets and liabilities of the Interim Insurance Regulatory Authority shall stand transferred to, and vested in, the Authority.

*Explanation.*—The assets of the Interim Insurance Regulatory Authority shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of the Interim Insurance Regulatory Authority and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Interim Insurance Regulatory Authority immediately before that day, for or in connection with the purpose of the said Regulatory Authority, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Authority;

(c) all sums of money due to the Interim Insurance Regulatory Authority immediately before that day shall be deemed to be due to the Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against the Interim Insurance Regulatory Authority immediately before that day may be continued or may be instituted by or against the Authority.

#### CHAPTER IV

##### DUTIES, POWERS AND FUNCTIONS OF AUTHORITY

14. (1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.

Duties, powers  
and functions  
of Authority.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include,—

(a) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;

(b) protection of the interests of the policy-holders in matters concerning assigning of policy, nomination by policy-holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;

(c) specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;

(d) specifying the code of conduct for surveyors and loss assessors;

(e) promoting efficiency in the conduct of insurance business;

(f) promoting and regulating professional organisations connected with the insurance and re-insurance business;

(g) levying fees and other charges for carrying out the purposes of this Act;

(h) calling for information from, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organisations connected with the insurance business;

(i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938;

(j) specifying the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;

(k) regulating investment of funds by insurance companies;

(l) regulating maintenance of margin of solvency;

(m) adjudication of disputes between insurers and intermediaries or insurance intermediaries;

(n) supervising the functioning of the Tariff Advisory Committee;

(o) specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organisations referred to in clause (f);

(p) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and

(q) exercising such other powers as may be prescribed.

## CHAPTER V

### FINANCE, ACCOUNTS AND AUDIT

Grants by  
Central  
Government.

15. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act.

Constitution of  
Fund.

16. (1) There shall be constituted a fund to be called "the Insurance Regulatory and Development Authority Fund" and there shall be credited thereto—

(a) all Government grants, fees and charges received by the Authority;

(b) all sums received by the Authority from such other source as may be decided upon by the Central Government;

(c) the percentage of prescribed premium income received from the insurer.

(2) The Fund shall be applied for meeting—

(a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;

(b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

Accounts and  
audit.

17. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books of account, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.



## CHAPTER VI

## MISCELLANEOUS

18. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Power of  
Central  
Government to  
issue directions.

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

19. (1) If, at any time the Central Government is of the opinion,—

Power of  
Central  
Government to  
supersede  
Authority.

(a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person to be the Controller of Insurance under section 2B of the Insurance Act, 1938, if not already done:

4 of 1938.

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—

(a) the Chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the Controller of Insurance; and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for reappointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Furnishing of  
returns, etc., to  
Central  
Government.

20. (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed, or as the Central Government may direct to furnish such returns, statements and other particulars in regard to any proposed or existing programme for the promotion and development of the insurance industry as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Authority shall, within nine months after the close of each financial year, submit to the Central Government a report giving a true and full account of its activities including the activities for promotion and development of the insurance business during the previous financial year.

(3) Copies of the reports received under sub-section (2) shall be laid, as soon as may be after they are received, before each House of Parliament.

Chairperson,  
members,  
officers and  
other  
employees of  
Authority to be  
public  
servants.

21. The Chairperson, members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Protection of  
action taken in  
good faith.

22. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or any member, officer or other employee of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder:

Provided that nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

Delegation of  
powers.

23. (1) The Authority may, by general or special order in writing, delegate to the Chairperson or any other member or officer of the Authority subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary.

(2) The Authority may, by a general or special order in writing, also form committees of the members and delegate to them the powers and functions of the Authority as may be specified by the regulations.

Power to make  
rules.

24. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members under sub-section (1) of section 7;

(b) the allowances to be paid to the part-time members under sub-section (2) of section 7;

(c) such other powers that may be exercised by the Authority under clause (g) of sub-section (2) of section 14;

(d) the form of annual statement of accounts to be maintained by the Authority under sub-section (1) of section 17;



(e) the form and manner in which and the time within which returns and statements and particulars are to be furnished to the Central Government under sub-section (1) of section 20;

(f) the matters under sub-section (5) of section 25 on which the Insurance Advisory Committee shall advise the Authority;

(g) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules.

25. (1) The Authority may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the Insurance Advisory Committee.

Establishment  
of Insurance  
Advisory  
Committee.

(2) The Insurance Advisory Committee shall consist of not more than twenty-five members excluding *ex officio* members to represent the interests of commerce, industry, transport, agriculture, consumer fora, surveyors, agents, intermediaries, organisations engaged in safety and loss prevention, research bodies and employees' association in the insurance sector.

(3) The Chairperson and the members of the Authority shall be the *ex officio* Chairperson and *ex officio* members of the Insurance Advisory Committee.

(4) The objects of the Insurance Advisory Committee shall be to advise the Authority on matters relating to the making of the regulations under section 26.

(5) Without prejudice to the provisions of sub-section (4), the Insurance Advisory Committee may advise the Authority on such other matters as may be prescribed.

26. (1) The Authority may, in consultation with the Insurance Advisory Committee, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

Power to make  
regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the time and places of meetings of the Authority and the procedure to be followed at such meetings including the quorum necessary for the transaction of business under sub-section (1) of section 10;

(b) the transaction of business at its meetings under sub-section (4) of section 10;

(c) the terms and other conditions of service of officers and other employees of the Authority under sub-section (2) of section 12;

(d) the powers and functions which may be delegated to committees of the members under sub-section (2) of section 23; and

(e) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be or may be made by regulations.

27. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Rules and  
regulations to  
be laid before  
Parliament.

28. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Application of  
other laws not  
barred.

29. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Power to  
remove  
difficulties.

Provided that no order shall be made under this section after the expiry of two years from the appointed day.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendment of  
Act 4 of 1938.

30. The Insurance Act, 1938 shall be amended in the manner specified in the First Schedule to this Act.

Amendment of  
Act 31 of 1956.

31. The Life Insurance Corporation Act, 1956 shall be amended in the manner specified in the Second Schedule to this Act.

Amendment of  
Act 57 of 1972.

32. The General Insurance Business (Nationalisation) Act, 1972 shall be amended in the manner specified in the Third Schedule to this Act.

## THE FIRST SCHEDULE

(See section 30)

## AMENDMENTS TO THE INSURANCE ACT, 1938

(4 OF 1938)

1. In the Act, except in clause (5B) of section 2 and section 2B, for "Controller" wherever it occurs, substitute "Authority" and such consequential changes as the rules of grammar may require shall also be made.

2. In sections 27, 27A, 27B, 31, 32A, 40A, 48B, 64F, 64G, 64-I, 64J, 64L, 64R, 64UC, 64UM, 113 and 115, for "Central Government" wherever they occur, substitute "Authority".

3. Section 2,—

(a) after clause (I), insert the following:—

“(1A) “Authority” means the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999;”

(b) for clause (5B), substitute the following:—

“(5B) “Controller of Insurance” means the officer appointed by the Central Government under section 2B to exercise all the powers, discharge the functions and perform the duties of the Authority under this Act or the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 or the Insurance Regulatory and Development Authority Act, 1999;”

(c) after clause (7), insert the following:—

“(7A) “Indian insurance company” means any insurer being a company—

(a) which is formed and registered under the Companies Act, 1956;

(b) in which the aggregate holdings of equity shares by a foreign company, either by itself or through its subsidiary companies or its nominees, do not exceed twenty-six per cent. paid-up equity capital of such Indian insurance company;

(c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business.

*Explanation.*—For the purposes of this clause, the expression “foreign company” shall have the meaning assigned to it under clause (23A) of section 2 of the Income-tax Act, 1961;”

(d) in clause (14), for “section 114”, substitute “this Act”.

4. After section 2, insert the following:—

“2A. Words and expressions used and not defined in this Act but defined in the Life Insurance Corporation Act, 1956, the General Insurance Business (Nationalisation) Act, 1972 and the Insurance Regulatory and Development Authority Act, 1999 shall have the meanings respectively assigned to them in those Acts.”

5. Section 2B, for sub-section (1), substitute the following:—

“(1) If at any time, the Authority is superseded under sub-section (1) of section 19 of the Insurance Regulatory and Development Authority Act, 1999, the Central Government may, by notification in the Official Gazette, appoint a person to be the Controller of Insurance till such time the Authority is reconstituted under sub-section (3) of section 19 of that Act.”

Interpretation  
of certain  
words and  
expressions.

6. Section 2C, in sub-section (1), after the second proviso, insert the following:—

“Provided also that no insurer other than an Indian insurance company shall begin to carry on any class of insurance business in India under this Act on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.”

7. Section 3,—

(a) in sub-section (1), after the first proviso, insert the following:—

“Provided further that a person or insurer, as the case may be, carrying on any class of insurance business in India, on or before the commencement of the Insurance Regulatory and Development Authority Act, 1999, for which no registration certificate was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he had made an application for such registration within the said period of three months, till the disposal of such application:

Provided also that any certificate of registration, obtained immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be deemed to have been obtained from the Authority in accordance with the provisions of this Act.”;

(b) in sub-section (2),—

(i) in the opening portion, for “Every application for registration shall be accompanied by—”, substitute the following:—

“Every application for registration shall be made in such manner as may be determined by the regulations made by the Authority and shall be accompanied by—”;

(ii) in clause (d), for “working capital”, substitute “paid-up equity capital or working capital”;

(iii) in clause (f), in the proviso, omit “and” occurring at the end;

(iv) for clause (g), substitute the following:—

“(g) the receipt showing payment of fee as may be determined by the regulations which shall not exceed fifty thousand rupees for each class of business as may be specified by the regulations made by the Authority;

(h) such other documents as may be specified by the regulations made by the Authority.”;

(c) after sub-section (2A), insert—

“(2AA) The Authority shall give preference to register the applicant and grant him a certificate of registration if such applicant agrees, in the form and manner as may be specified by the regulations made by the Authority, to carry on the life insurance business or general insurance business for providing health cover to individuals or group of individuals.”;

(d) in sub-section (4),—

(i) in clause (f), for “of any rule or order made thereunder, or”, substitute the following:—

“of any rule or any regulation or order made or, any direction issued thereunder, or”;

(ii) in clause (h), insert “or” at the end;

(iii) after clause (h), insert the following:—

“(i) if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999, or

(j) if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 1956 or the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 or the Foreign Exchange Regulation Act, 1973.”;

1 of 1956,  
31 of 1956,  
57 of 1972,  
46 of 1973.

(e) in sub-section (5C),—

(i) for "clause (h)", substitute "clause (h) or clause (i) or clause (j)";

(ii) for "any requirement of this Act or of any rule or order made thereunder", substitute the following:—

"any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999, or of any rule or any regulation, or any order made thereunder or any direction issued under those Acts";

(f) after sub-section (5D), insert the following:—

"(5E) The Authority may, by order, suspend or cancel any registration in such manner as may be determined by the regulations made by it:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.";

(g) for sub-section (7), substitute the following:—

"(7) The Authority may, on payment of such fee, not exceeding five thousand rupees, as may be determined by the regulations, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where the Authority is of opinion that the issue of duplicate certificate is necessary."

8. Section 3A,—

(a) in sub-section (1), for "the 31st day of December, 1941.", substitute the following:—

"the 31st day of March, after the commencement of the Insurance Regulatory and Development Authority Act, 1999.";

(b) in sub-section (2),—

(i) for "prescribed fee", substitute "fee as determined by the regulations made by the Authority";

(ii) for clause (i), substitute the following:—

"(i) exceed one-fourth of one per cent. of such premium income or rupees five crores, whichever is less,";

(iii) for clause (ii), substitute the following:—

"(ii) be less, in any case, than fifty thousand rupees for each class of insurance business.";

(c) in sub-section (3), for "prescribed fee", substitute "fee as determined by the regulations made by the Authority";

(d) in sub-section (4), for "prescribed fee", substitute "fee as determined by the regulations made by the Authority, and".

9. For section 6, substitute the following:—

"6. No insurer carrying on the business of life insurance, general insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has,—

Requirement as to capital.

(i) a paid-up equity capital of rupees one hundred crores, in case of a person carrying on the business of life insurance or general insurance; or



(ii) a paid-up equity capital of rupees two hundred crores, in case of a person carrying on exclusively the business as a re-insurer:

Provided that in determining the paid-up equity capital specified under clause (i) or clause (ii), the deposit to be made under section 7 and any preliminary expenses incurred in the formation and registration of the company shall be excluded:

Provided further that an insurer carrying on business of life insurance, general insurance or re-insurance in India before the commencement of the Insurance Regulatory and Development Authority Act, 1999 and who is required to be registered under this Act, shall have a paid-up equity capital in accordance with clause (i) and clause (ii), as the case may be, within six months of the commencement of that Act."

#### 10. Section 6A,—

(a) in sub-section (4), in clause (b),—

(I) in sub-clause (i), omit "and" occurring at the end;

(II) in sub-clause (ii), for "sanction of the Central Government has been obtained to the transfer.", substitute "approval of the Authority has been obtained to the transfer;"

(III) after sub-clause (ii), insert the following:—

"(iii) where, the nominal value of the shares intended to be transferred by any individual, firm, group, constituents of a group, or body corporate under the same management, jointly or severally exceeds one per cent. of the paid-up equity capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer.

*Explanation.*—For the purposes of this sub-clause, the expressions "group" and "same management" shall have the same meanings respectively assigned to them in the Monopolies and Restrictive Trade Practices Act, 1969;

54 of 1969.

(b) in sub-section (1),—

(i) for "Explanation 1", substitute "Explanation";

(ii) omit Explanation 2.

#### 11. After section 6A, insert the following:—

"6AA. (1) No promoter shall at any time hold more than twenty-six per cent. or such other percentage as may be prescribed, of the paid-up equity capital in an Indian insurance company:

Provided that in a case where an Indian insurance company begins the business of life insurance, general insurance or re-insurance in which the promoters hold more than twenty-six per cent. of the paid-up equity capital or such other excess percentage as may be prescribed, the promoters shall divest in a phased manner the share capital in excess of the twenty-six per cent. of the paid-up equity capital or such excess paid-up equity capital as may be prescribed, after a period of ten years from the date of the commencement of the said business by such Indian insurance company or within such period as may be prescribed by the Central Government.

*Explanation.*—For the removal of doubts, it is hereby declared that nothing contained in the proviso shall apply to the promoters being foreign company, referred to in sub-clause (b) of clause (7A) of section 2.

(2) The manner and procedure for divesting the excess share capital under sub-section (1) shall be specified by the regulations made by the Authority."

Manner of  
divesting  
excess  
shareholding  
by promoter in  
certain cases.

## 12. Section 7,—

(a) in sub-section (1),—

(i) omit "not being an insurer specified in sub-clause (c) of clause (9) of section 2";

(ii) for clauses (a) and (b), substitute the following:—

"(a) in the case of life insurance business, a sum equivalent to one per cent. of his total gross premium written in India in any financial year commencing after the 31st day of March, 2000, not exceeding rupees ten crores;

(b) in the case of general insurance business, a sum equivalent to three per cent. of his total gross premium written in India, in any financial year commencing after the 31st day of March, 2000, not exceeding rupees ten crores;

(c) in the case of re-insurance business, a sum of rupees twenty crores;"

(b) omit sub-sections (1A), (1B), (1C), (1D) and (1E).

## 13. Section 11,—

(a) in sub-section (1), for "calendar year", substitute "financial year";

(b) after sub-section (1), insert the following:—

"(1A) Notwithstanding anything contained in sub-section (1), every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, in respect of insurance business transacted by him and in respect of his shareholders' funds, shall, at the expiration of each financial year, prepare with reference to that year, a balance-sheet, a profit and loss account, a separate account of receipts and payments, a revenue account in accordance with the regulations made by the Authority.

(1B) Every insurer shall keep separate accounts relating to funds of shareholders and policy-holders."

## 14. Section 13,—

(a) in sub-section (1),—

(i) for "once at least in every three years", substitute "every year";

(ii) in the first proviso, for "not later than four years", substitute "not later than two years";

(iii) after the second proviso, insert the following:—

"Provided also that for an insurer carrying on life insurance business in India immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, the last date as at which the first investigation after such commencement should be caused by an actuary, shall be the 31st day of March, 2001;"

(iv) after the third proviso, insert the following:—

"Provided also that every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall cause an abstract of the report of the actuary to be made in the manner specified by the regulations made by the Authority;"

(b) in sub-section (4), after the proviso, insert the following:—

"Provided further that the statement referred to in sub-section (4) shall be appended in the form and in the manner specified by the regulations made by the Authority."

15. After section 27B, insert the following:—

"27C. No insurer shall directly or indirectly invest outside India the funds of the policy-holders.

27D. (1) Without prejudice to anything contained in sections 27, 27A and 27B, the Authority may, in the interests of the policy-holders, specify by the regulations made by it, the time, manner and other conditions of investment of assets to be held by an insurer for the purposes of this Act.

(2) The Authority may give specific directions for the time, manner and other conditions subject to which the funds of policy-holders shall be invested in the infrastructure and social sector as may be specified by regulations made by the Authority and such regulations shall apply uniformly to all the insurers carrying on the business of life insurance, general insurance, or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.

(3) The Authority may, after taking into account the nature of business and to protect the interests of the policy-holders, issue to an insurer the directions relating to the time, manner and other conditions of investment of assets to be held by him:

Provided that no direction under this sub-section shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard."

16. Section 28A, in sub-section (1), for "31st day of December", substitute "31st day of March".

17. Section 28B, in sub-section (1), for "31st day of December", substitute "31st day of March".

18. Section 31B,—

(a) in sub-section (1), for "Central Government" at both the places where they occur, substitute "Authority";

(b) in sub-section (2), for "a statement in the prescribed form", substitute "a statement, in the form specified by the regulations made by the Authority,";

(c) after sub-section (3), insert the following:—

"(4) Every direction under this section shall be issued by an order made by the Authority:

Provided that no order under this section shall be made unless the person concerned has been given an opportunity of being heard."

19. After section 32A, insert the following:—

"32B. Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, undertake such percentages of life insurance business and general insurance business in the rural or social sector, as may be specified, in the Official Gazette by the Authority, in this behalf.

32C. Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, discharge the obligations specified under section 32B to provide life insurance or general insurance policies to the persons residing in the rural sector, workers in the unorganised or informal sector or for economically vulnerable or backward classes of the society and other categories of persons as may specified by regulations made by the Authority and such insurance policies shall include insurance for crops."

20. For section 33, substitute the following:—

#### 'INVESTIGATION

33. (1) The Authority may, at any time, by order in writing, direct any person (hereafter in this section referred to as "Investigating Authority") specified in the order to investigate the affairs of any insurer and to report to the Authority on any investigation made by such Investigating Authority:

Prohibition for investment of funds outside India.

Manner and conditions of investment.

Insurance business in rural or social sector.

Obligations of insurer in respect of rural or unorganised sector and backward classes.

Power of investigation and inspection by Authority.

Provided that the Investigating Authority may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section.

1 of 1956.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, the Investigating Authority may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made by one or more of his officers of any insurer and his books of account; and the Investigating Authority shall supply to the insurer a copy of his report on such inspection.

(3) It shall be the duty of every manager, managing director or other officer of the insurer to produce before the Investigating Authority directed to make the investigation under sub-section (1), or inspection under sub-section (2), all such books of account, registers and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer as the said Investigating Authority may require of him within such time as the said Investigating Authority may specify.

(4) Any Investigating Authority, directed to make an investigation under sub-section (1), or inspection under sub-section (2), may examine on oath, any manager, managing director or other officer of the insurer in relation to his business and may administer oaths accordingly.

(5) The Investigating Authority shall, if he has been directed by the Authority to cause an inspection to be made, and may, in any other case, report to the Authority on any inspection made under this section.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Authority may, after giving such opportunity to the insurer to make a representation in connection with the report as, in the opinion of the Authority, seems reasonable, by order in writing,—

(a) require the insurer, to take such action in respect of any matter arising out of the report as the Authority may think fit; or

(b) cancel the registration of the insurer; or

(c) direct any person to apply to the court for the winding up of the insurer, if a company, whether the registration of the insurer has been cancelled under clause (b) or not.

(7) The Authority may, after giving reasonable notice to the insurer, publish the report submitted by the Investigating Authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

(8) The Authority may, by the regulations made by it, specify the minimum information to be maintained by insurers in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Authority to discharge satisfactorily his functions under this section.

*Explanation.*—For the purposes of this section, the expression “insurer” shall include in the case of an insurer incorporated in India—

(a) all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and

(b) all its branches whether situated in India or outside India.

(9) No order made under this section other than an order made under clause (b) of sub-section (6) shall be capable of being called in question in any court.

(10) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer, shall have priority over that debts due from the insurer and shall be recoverable as an arrear of land revenue.

21. Section 33A, omit “Central Government or the”.



## 22. Section 34H,—

(a) in sub-section (1),—

(i) for "Controller", substitute "Chairperson of the Authority";

(ii) for "an Assistant Controller of Insurance", substitute "an officer authorised by the Authority";

(b) in sub-sections (5) and (7), for "Controller" wherever it occurs, substitute "Chairperson of the Authority".

## 23. Section 35,—

(a) in sub-section (1), for "sanctioned by the Controller", substitute "approved by the Authority";

(b) in sub-section (3),—

(i) in the first paragraph, for "to sanction any such scheme", substitute "to approve any such scheme";

(ii) in the second paragraph, for "the amalgamation or transfer if sanctioned", substitute "the amalgamation or transfer if approved".

## 24. Section 36,—

(a) in sub-section (1), for "may sanction the arrangement", substitute "may approve the arrangement";

(b) in sub-section (2),—

(i) for "the insurers concerned in the amalgamation, the Controller may sanction", substitute "the insurers concerned in the amalgamation, the Authority may approve";

(ii) for "contracts as sanctioned by the Controller", substitute "contracts as approved by the Authority".

## 25. Section 37, in clause (c), for "scheme sanctioned", substitute "scheme approved".

26. In section 40A, in sub-section (3), for the portion beginning with the words "an amount exceeding" and ending with the words "ten per cent. of the premium payable on the policy", substitute "an amount not exceeding fifteen per cent. of the premium payable on the policy where the policy relates to fire or marine insurance or miscellaneous insurance."

## 27. Section 42,—

(a) for sub-section (1), substitute the following:—

"(1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by it and on payment of the fee determined by the regulations, which shall not be more than two hundred and fifty rupees, issue to any person making an application in the manner determined by the regulations, a licence to act as an insurance agent for the purpose of soliciting or procuring insurance business:

Provided that,—

(i) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4); and

(ii) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications:

Provided further that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall be deemed to have been issued in accordance with the regulations which provide for such licence."

(b) for sub-section (3), substitute the following:—

"(3) A licence issued under this section, after the date of the commencement of the Insurance Regulatory and Development Authority Act, 1999,



shall remain in force for a period of three years only from the date of issue, but shall, if the applicant, being an individual does not, or being a company or firm any of its directors or partners does not, suffer from any of the disqualifications mentioned in clauses (b), (c), (d), (e) and (f) of sub-section (4) and the application for renewal of licence reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the fee determined by the regulations made by the Authority which shall not be more than rupees two hundred and fifty, and additional fee of an amount determined by the regulations not exceeding rupees one hundred by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force."

(c) in sub-section (3A), for the proviso, substitute the following:—

"Provided that the Authority may, if satisfied that undue hardship would be caused otherwise, accept any application in contravention of this sub-section on payment by the applicant of a penalty of seven hundred and fifty rupees."

(d) in sub-section (4), after clause (d), insert the following:—

"(e) that he does not possess the requisite qualifications and practical training for a period not exceeding twelve months, as may be specified by the regulations made by the Authority in this behalf;

(f) that he has not passed such examination as may be specified by the regulations made by the Authority in this behalf:

Provided that a person who had been issued a licence under sub-section (1) of this section or sub-section (1) of section 64UM shall not be required to possess the requisite qualifications, practical training and pass such examination as required by clauses (e) and (f);

(g) that he violates the code of conduct as may be specified by the regulations made by the Authority."

(e) for sub-section (6), substitute the following:—

"(6) The Authority may issue a duplicate licence to replace a licence lost, destroyed or mutilated, on payment of such fee not exceeding fifty rupees as may be determined by the regulations."

(f) in sub-section (7),—

(i) for "fifty rupees", substitute "five hundred rupees";

(ii) for "one hundred rupees", substitute "one thousand rupees";

(g) in sub-section (8), for "fifty rupees", substitute "five thousand rupees".

28. Section 42A, in sub-section (1),—

(a) for "Controller or an officer authorised by him", substitute "Authority or an officer authorised by it";

(b) for "an application to him", substitute "an application to it".

29. After section 42C, insert the following:—

"42D. (1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by the Authority and on payment of the fees determined by the regulations made by the Authority, issue to any person making an application in the manner determined by the regulations, and not suffering from any of the disqualifications herein mentioned, a licence to act as an intermediary or an insurance intermediary under this Act:

Issue of  
licence to  
intermediary  
or insurance  
intermediary.

Provided that,—

(a) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42, or

(b) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications.

(2) A licence issued under this section shall entitle the holder thereof to act as an intermediary or insurance intermediary.

(3) A licence issued under this section shall remain in force for a period of three years only from the date of issue, but shall, if the applicant, being an individual does not, or being a company or firm any of its directors or partners does not suffer from any of the disqualifications mentioned in clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 42 and the application for renewal of licence reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the fee, determined by the regulations made by the Authority and additional fee for an amount determined by the regulations, not exceeding one hundred rupees by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force.

(4) No application for the renewal of a licence under this section shall be entertained if the application does not reach the issuing authority before the licence ceases to remain in force:

Provided that the Authority may, if satisfied that undue hardship would be caused otherwise, accept any application in contravention of this sub-section on payment by the applicant of a penalty of seven hundred and fifty rupees.

(5) The disqualifications above referred to shall be the following:—

(a) that the person is a minor;

(b) that he is found to be of unsound mind by a court of competent jurisdiction;

(c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction:

Provided that, where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Authority shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause;

(d) that in the course of any judicial proceeding relating to any policy of insurance of the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud dishonestly or misrepresentation against an insurer or an insured;

(e) that he does not possess the requisite qualifications and practical training for a period not exceeding twelve months, as may be specified by the regulations made by the Authority in this behalf;

(f) that he has not passed such examinations as may be specified by the regulations made by the Authority in this behalf;

(g) that he violates the code of conduct as may be specified by the regulations made by the Authority.

(6) If it be found that an intermediary or an insurance intermediary suffers from any of the foregoing disqualifications, without prejudice to any other penalty to which he may be liable, the Authority shall, and if the intermediary or an insurance intermediary has knowingly contravened any provision of this Act may cancel the licence issued to the intermediary or insurance intermediary under this section.

(7) The Authority may issue a duplicate licence to replace a licence lost, destroyed or mutilated, on payment of such fee, as may be determined by the regulations made by the Authority.

(8) Any person who acts as an intermediary or an insurance intermediary without holding a licence issued under this section to act as such, shall be punishable with fine, and any insurer or any person who appoints as an intermediary or an insurance intermediary or any person not licensed to act as such or transacts any insurance business in India through any such person, shall be punishable with fine.

(9) Where the person contravening sub-section (8) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine."

30. Section 64UA, in sub-section (1), in sub-clause (a), for "Controller of Insurance", substitute "Chairperson of the Authority".

31. Section 64UB,—

(a) for sub-section (1), substitute the following:—

"(1) The Authority may, by notification in the Official Gazette, make regulations to carryout the purposes of this Part."

(b) in sub-section (2), for "rules", substitute "regulations";

(c) in sub-section (3), for "Central Government" at both the places where it occur, substitute "Authority";

(d) in sub-section (5), for "Controller of Insurance", substitute "Chairperson of the Authority".

32. Section 64UC, in sub-section (1), in proviso, for "the Controller may, with the previous approval of the Central Government", substitute "the Authority may".

33. Section 64UD, after sub-section (1), insert the following:—

"Provided that the Chairperson of the Authority shall become the Chairman of the Advisory Committee with effect from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and function as such, and any Chairman of the Tariff Committee holding office immediately before such commencement shall cease to be the Chairman."

34. Section 64UJ, in sub-section (5), for "Central Government", wherever it occurs, substitute "Authority".

35. Section 64UM,—

(a) in sub-section (1),—

(i) in paragraph (B), after "the Insurance (Amendment) Act, 1968", insert "but before the commencement of the Insurance Regulatory and Development Authority Act, 1999";

(ii) after paragraph (B), insert the following:—

"(BA) Every person who intends to act as a surveyor or loss assessor after the expiry of a period of one year from the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall make an application to the Authority within such time, in such manner and on payment of such fee as may be determined by the regulations made by the Authority:

Provided that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall be deemed to have been issued in accordance with the regulations providing for such licence."

(iii) in paragraph (C), for "as may be prescribed", substitute "as may be determined by the regulations";

(iv) in paragraph (D), in clause (i),—

(A) for item (a), substitute the following:—

"(a) has been in practice as a surveyor or loss assessor on the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, or";

(B) in item (f), for "prescribed", substitute "specified by the regulations made by the Authority";

(b) after sub-section (I), insert—

"(IA) Every surveyor and loss assessor shall comply with the code of conduct in respect of their duties, responsibilities and other professional requirements as may be specified by the regulations made by the Authority."

### 36. Section 64V,—

(a) in sub-section (I),—

(i) in clause (i), after sub-clause (g), insert the following:—

"(h) such other asset or assets as may be specified by the regulations made in this behalf";

(ii) in clause (ii),—

(A) in sub-clause (b), in items (i) and (ii), for "40 per cent.", substitute "50 per cent.";

(B) after sub-clause (f), insert the following:—

"(g) such other liability which may be made in this behalf to be included for the purpose of clause (ii).";

(b) for sub-section (2), substitute the following:—

"(2) Every insurer shall furnish to the Authority with his returns under section 15 or section 16, as the case may be, a statement certified by an auditor approved by the Authority in respect of general insurance business, or an actuary approved by the Authority in respect of life insurance business, as the case may be, of his assets and liabilities assessed in the manner required by this section as on the 31st day of March of the preceding year.

(3) Every insurer shall value his assets and liabilities in the manner required by this section and in accordance with the regulations which may be made by the Authority in this behalf."

### 37. Section 64VA,—

(a) in sub-section (I), for "at all times", substitute "at all times before the commencement of the Insurance Regulatory and Development Authority Act, 1999";

(b) after sub-section (I), insert the following:—

"(IA) Every insurer shall, at all times, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, maintain an excess of the value of his assets over the amount of his liabilities of not less than the amount arrived at as follows (hereinafter referred to in this section referred to as the "required solvency margin"), namely:—

(i) in the case of an insurer carrying on life insurance business, the required solvency margin shall be the higher of the following amounts—

(a) fifty crores of rupees (one hundred crores of rupees in case of re-insurers); or



(b) the aggregate sums of the results arrived at in items (I) and (II) stated below:—

(I) the aggregate of the results arrived at by applying the calculation described in item (A) below (Step I) and the calculation described in item (B) below (Step II):

(A) for Step I—

(A. 1) there shall be taken, a sum equal to a percentage determined by the regulations not exceeding five per cent. of the mathematical reserves for direct business and re-insurance acceptances without any deduction for re-insurance cessions;

(A. 2) the amount of mathematical reserves at the end of the preceding financial year after the deduction of re-insurance cessions shall be expressed as a percentage of the amount of those mathematical reserves before any such deduction; and

(A. 3) the sum mentioned in item (A. 1) above shall be multiplied—

(A.3.1) where the percentage arrived at under item (A. 2) above is greater than eighty-five per cent. (or in the case of a re-insurer carrying on exclusive re-insurance business, fifty per cent.), by that greater percentage; and

(A.3.2) in any other case, by eighty-five per cent. (or in the case of a re-insurer carrying on exclusive re-insurance business, by fifty per cent.);

(B) for Step II—

(B. 1) there shall be taken, a sum equal to a percentage determined by the regulations made by the Authority not exceeding one per cent. of the sum at risk for the policies on which the sum at risk is not a negative figure, and

(B. 2) the amount of sum at risk at the end of the preceding financial year for policies on which the sum at risk is not a negative figure after the deduction of re-insurance cession shall be expressed as a percentage of the amount of that sum at risk before any such deduction, and

(B. 3) the sum arrived at under item (B. 1) above shall be multiplied—

(B. 3.1) where the percentage arrived at under item (B. 2) above is greater than fifty per cent., by that greater percentage; and

(B. 3.2) in any other case, by fifty per cent.

(II) a percentage determined by the regulations made by the Authority of the value of assets determined in accordance with the provisions of section 64V;

(ii) in the case of an insurer carrying on general insurance business, the required solvency margin, shall be the highest of the following amounts:—

(a) fifty crores of rupees (one hundred crores of rupees in case of re-insurer); or

(b) a sum equivalent to twenty per cent. of net premium income;

or



(c) a sum equivalent to thirty per cent. of net incurred claims, subject to credit for re-insurance in computing net premiums and net incurred claims being actual but a percentage, determined by the regulations, not exceeding fifty per cent.:

Provided that if in respect of any insurer, the Authority is satisfied that either by reason of an unfavourable claim experience or because of sharp increase in the volume of the business, or for any other reason, compliance with the provisions of this sub-section would cause undue hardship to the insurer, the Authority may direct, for such period and subject to such conditions, such solvency margin not being less than the lower of the amount mentioned in sub-clause (i) or sub-clause (ii) above, as the case may be.

*Explanation.*—For the purposes of this sub-section, the expressions—

(i) "mathematical reserves" means the provision made by an insurer to cover liabilities (excluding liabilities which have fallen due and liabilities arising from deposit back arrangement in relation to any policy whereby an amount is deposited by re-insurer with the cedant) arising under or in connection with policies or contracts for life insurance business. Mathematical reserves also include specific provision for adverse deviations of the bases, such as mortality and morbidity rates, interest rates, and expense rates, and any explicit provisions made, in the valuation of liabilities, in accordance with the regulations made by the Authority for this purpose;

(ii) "net incurred claims" means the average of the net incurred claims during the specified period of not exceeding three preceding financial years;

(iii) "sum at risk", in relation to a life insurance policy, means a sum which is—

(a) in any case in which an amount is payable in consequence of death other than a case falling within sub-clause (b) below, the amount payable on death, and

(b) in any case in which the benefit under the policy in question consists of the making, in consequence of death, of the payments of annuity, payment of a sum by instalments or any other kind of periodic payments, the present value of that benefit,

less in either case the mathematical reserves in respect of the relevant policies.;

(c) after sub-section (2), insert the following:—

"(2A) If, at any time an insurer does not maintain the required solvency margin in accordance with the provisions of this section, he shall, in accordance with the directions issued by the Authority, submit a financial plan, indicating a plan of action to correct the deficiency to the Authority within a specified period not exceeding three months.

(2B) An insurer who has submitted a plan under sub-section (2A) to the Authority shall propose modifications to the plan if the Authority considers it inadequate, and shall give effect to any plan accepted by the Authority as adequate.

(2C) An insurer who does not comply with the provisions of sub-section (2A) shall be deemed to be insolvent and may be wound up by the court.;"

(d) after sub-section (6), insert the following:—

“(7) Every insurer shall furnish to the Authority his returns under section 15 or section 16, as the case may be, in case of life insurance business a statement certified by an actuary approved by the Authority, and in case of general insurance business a statement certified by an auditor approved by the Authority, of the required solvency margin maintained by the insurer in the manner required by sub-section (1A).”

38. Section 70, in sub-section (1), for “the Controller a certificate of registration”, substitute “the Authority, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, a certificate of registration”.

39. Section 95, in sub-section (1), for “In this Part—”, substitute “In this Part, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999,—”.

40. Section 101A,—

(a) in sub-section (1), for “the Central Government”, substitute “the Authority, with the previous approval of the Central Government.”;

(b) in sub-section (2), for “the Central Government”, substitute “the Authority”.

41. Section 101B,—

(a) in sub-section (1), for “the Central Government”, substitute “the Authority with the previous approval of the Central Government.”;

(b) in sub-section (2), for “prescribed”, substitute “determined by the regulations made by the Authority”.

42. For sections 102 to 105, substitute the following:—

“102. If any person, who is required under this Act, or rules or regulations made thereunder,—

(a) to furnish any document, statement, account, return or report to the Authority, fails to furnish the same; or

(b) to comply with the directions, fails to comply with such directions;

(c) to maintain solvency margin, fails to maintain such solvency margin;

(d) to comply with the directions on the insurance treaties, fails to comply with such directions on the insurance treaties,

he shall be liable to a penalty not exceeding five lakh rupees for each such failure and punishable with fine.

103. If a person makes a statement, or furnishes any document, statement, account, return or report which is false and which he either knows or believes to be false or does not believe to be true,—

(a) he shall be liable to a penalty not exceeding five lakh rupees for each such failure; and

(b) he shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

104. If a person fails to comply with the provisions of section 27 or section 27A or section 27B or section 27C or section 27D, he shall be liable to a penalty not exceeding five lakh rupees for each such failure.

105. If any director, managing director, manager or other officer or employees of an insurer wrongfully obtains possession of any property or wrongfully applies to any purpose of the Act, he shall be liable to a penalty not exceeding two lakh rupees for each such failure.

Penalty for default in complying with, or act in contravention of, this Act.

Penalty for carrying on insurance business in contravention of sections 3, 7 and 98.

Penalty for false statement in document.

Wrongfully obtaining or withholding property.

Offences by  
companies.

105A. (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

(a) "company" means any body corporate, and includes—

(i) a firm; and

(ii) an association of persons or a body of individuals whether incorporated or not; and

(b) "director", in relation to—

(i) a firm, means a partner in the firm;

(ii) an association of persons or a body of individuals, means any member controlling the affairs thereof.

Penalty for  
failure to  
comply with  
section 32B.

105B. If an insurer fails to comply with the provisions of section 32B, he shall be liable to a penalty not exceeding five lakh rupees for each such failure and shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

Penalty for  
failure to  
comply with  
section 32C.

105C. If an insurer fails to comply with the provisions of section 32C, he shall be liable to a penalty not exceeding twenty-five lakh rupees for each such failure and in the case of subsequent and continuing failure, the registration granted to such insurer under section 3 shall be cancelled by the Authority."

43. In sections 110A, 110B and 110C, for "Controller" wherever it occurs, substitute "Chairperson of the Authority".

44. Section 110G, for "Controller" at both the places where it occurs, substitute "Chairperson of the Authority".

45. Section 110H, in sub-section (1), for "under sections", substitute "under sections 27D,".

46. Section 114, in sub-section (2),—

(a) after clause (a), insert the following:—

"(aa) such other percentage of paid-up equity capital in excess of twenty-six per cent. of the paid-up equity capital and the period within which such excess paid-up equity capital shall be divested under sub-section (1) of section 6AA.";

(b) omit clauses (g) and (h).

Power of  
Authority to  
make  
regulations.

47. After section 114, insert the following:—

"114A. (1) The Authority may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the matters including fee relating to the registration of insurers under section 3;

(b) the manner of suspension or cancellation of registration under sub-section (5E) of section 3;

(c) such fee, not exceeding five thousand rupees, as may be determined by the regulations for issue of a duplicate certificate of registration under sub-section (7) of section 3;

(d) the matters relating to the renewal of registration and fee therefor under section 3A;

(e) the manner and procedure for divesting excess share capital under sub-section (2) of section 6AA;

(f) the preparation of balance-sheet, profit and loss account and a separate account of receipts and payments and revenue account under sub-section (1A) of section 11;

(g) the manner in which an abstract of the report of the actuary to be specified under the fourth proviso to sub-section (1) of section 13;

(h) the form and manner in which the statement referred to in sub-section (4) of section 13 shall be appended;

(i) the time, manner and other conditions of investment of assets held by an insurer under sub-sections (1), (2) and (3) of section 27D;

(j) the minimum information to be maintained by insurer in their books, the manner in which such information should be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto under sub-section (8) of section 33;

(k) the manner for making an application, the manner and the fee for issue of a licence to act as an insurance agent under sub-section (1) of section 42;

(l) the fee and the additional fee to be determined for renewal of licence of insurance agent under sub-section (3) of section 42;

(m) the requisite qualifications and practical training to act as an insurance agent under clause (e) of sub-section (4) of section 42;

(n) the passing of examination to act as an insurance agent under clause (f) of sub-section (4) of section 42;

(o) the code of conduct under clause (g) of sub-section (4) of section 42;

(p) the fee not exceeding rupees fifty for issue of duplicate licence under sub-section (6) of section 42;

(q) the manner and the fees for issue of a licence to an intermediary or an insurance intermediary under sub-section (1) of section 42D;

(r) the fee and the additional fee to be determined for renewal of licence of intermediaries or insurance intermediaries under sub-section (3) of section 42D;

(s) the requisite qualifications and practical training of intermediaries or insurance intermediaries under clause (e) of sub-section (5) of section 42D;



(f) the examination to be passed to act as an intermediary or insurance intermediary under clause (f) of sub-section (5) of section 42D;

(u) the code of conduct under clause (g) of sub-section (5) of section 42D;

(v) the fee for issue of duplicate licence under sub-section (7) of section 42D;

(w) such matters as specified under sub-section (2) of section 64UB relating to the Tariff Advisory Committee;

(x) the matters relating to licensing of surveyors and loss assessors, their duties, responsibilities and other professional requirements under section 64UM;

(y) such other asset or assets as may be specified under clause (h) of sub-section (1) of section 64V for the purposes of ascertaining sufficiency of assets under section 64VA;

(z) the valuation of assets and liabilities under sub-section (3) of section 64V;

(za) the matters specified under sub-section (1A) of section 64VA relating to sufficiency of assets;

(zb) the matters relating to re-insurance under sections 101A and 101B;

(zc) the matters relating to redressal of grievances of policy-holders to protect their interest and to regulate, promote and ensure orderly growth of insurance industry; and

(zd) any other matter which is to be, or may be, specified by the regulations made by the Authority or in respect of which provision is to be made or may be made by the regulations.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

48. Section 116A, for "Central Government", at both places where they occur, substitute "Central Government, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999."



## THE SECOND SCHEDULE

(See section 31)

## AMENDMENTS TO THE LIFE INSURANCE CORPORATION ACT, 1956

(31 OF 1956)

1. In the Act, for "Controller" wherever it occurs, substitute "Authority".
2. After section 30, insert the following:—

"30A. Notwithstanding anything contained in this Act, the exclusive privilege of carrying on life insurance business in India by the Corporation shall cease on and from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and the Corporation shall, thereafter, carry on life insurance business in India in accordance with the provisions of the Insurance Act, 1938."

Exclusive  
privilege of  
Corporation to  
cease.

4 of 1938.

## THE THIRD SCHEDULE

(See section 32)

## AMENDMENT TO THE GENERAL INSURANCE BUSINESS (NATIONALISATION) ACT, 1972

(57 OF 1972)

After section 24, insert the following:—

"24A. Notwithstanding anything contained in this Act, the exclusive privilege of the Corporation and the acquiring companies of carrying on general insurance business in India shall cease on and from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and the Corporation and the acquiring companies shall, thereafter, carry on general insurance business in India in accordance with the provisions of the Insurance Act, 1938."

Exclusive  
privilege of  
Corporation  
and acquiring  
companies to  
cease.

4 of 1938.

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



सत्यमेव जयते

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 8th June, 2000.

No. : RP/27/2000/Act-42/99/E. - The following Act of Parliament is re-published for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 29th December, 1999 / Pausa 8, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 29th December, 1999 and is hereby published for general information :-

#### THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999.

(Act No. 42 of 1999)

(29th December, 1999)

#### AN ACT

*to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.*

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

#### CHAPTER I

#### PRELIMINARY

1. (1) This Act may be called the Foreign Exchange Management Act, 1999.
- (2) It extends to the whole of India.
- (3) It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.
- (4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Short title,  
extent,  
application and  
commence-  
ment.

## Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Adjudicating Authority" means an officer authorised under sub-section (1) of section 16;

(b) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange established under section 18;

(c) "authorised person" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;

(d) "Bench" means a Bench of the Appellate Tribunal;

(e) "capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6;

(f) "Chairperson" means the Chairperson of the Appellate Tribunal;

(g) "chartered accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;

38 of 1949.

(h) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;

(i) "currency notes" means and includes cash in the form of coins and bank notes;

(j) "current account transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,—

(i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,

(ii) payments due as interest on loans and as net income from investments,

(iii) remittances for living expenses of parents, spouse and children residing abroad, and

(iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

(k) "Director of Enforcement" means the Director of Enforcement appointed under sub-section (1) of section 36;

(l) "export", with its grammatical variations and cognate expressions, means—

(i) the taking out of India to a place outside India any goods,

(ii) provision of services from India to any person outside India;

(m) "foreign currency" means any currency other than Indian currency;

(n) "foreign exchange" means foreign currency and includes,—

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

2 of 1934.

25 of 1961.

(o) "foreign security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;

(p) "import", with its grammatical variations and cognate expressions, means bringing into India any goods or services;

(q) "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934;

(r) "legal practitioner" shall have the meaning assigned to it in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961;

(s) "Member" means a Member of the Appellate Tribunal and includes the Chairperson thereof;

(t) "notify" means to notify in the Official Gazette and the expression "notification" shall be construed accordingly;

(u) "person" includes—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office or branch owned or controlled by such person;

(v) "person resident in India" means—

(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include—

(A) a person who has gone out of India or who stays outside India, in either case—

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than—

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India;

(iv) an office, branch or agency outside India owned or controlled by a person resident in India;

(w) "person resident outside India" means a person who is not resident in India;



(x) "prescribed" means prescribed by rules made under this Act;

(y) "repatriate to India" means bringing into India the realised foreign exchange and—

(i) the selling of such foreign exchange to an authorised person in India in exchange for rupees, or

(ii) the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank,

and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly;

(z) "Reserve Bank" means the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934;

2 of 1934

(za) "security" means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944, savings certificates to which the Government Savings Certificates Act, 1959 applies, deposit receipts in respect of deposits of securities and units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 or of any mutual fund and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act;

18 of 1944

46 of 1959

52 of 1963

(zb) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

(zc) "Special Director (Appeals)" means an officer appointed under section 18;

(zd) "specify" means to specify by regulations made under this Act and the expression "specified" shall be construed accordingly;

(ze) "transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

## CHAPTER II

### REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

Dealing in foreign exchange, etc.

3. Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall—

(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;

(b) make any payment to or for the credit of any person resident outside India in any manner;

(c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner;

*Explanation.*—For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;



(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

*Explanation.*—For the purpose of this clause, “financial transaction” means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

4. Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

Holding of foreign exchange, etc.

5. Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction:

Current account transactions.

Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

6. (1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

Capital account transactions.

(2) The Reserve Bank may, in consultation with the Central Government, specify—

- (a) any class or classes of capital account transactions which are permissible;
- (b) the limit up to which foreign exchange shall be admissible for such transactions:

Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

(3) Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following—

- (a) transfer or issue of any foreign security by a person resident in India;
- (b) transfer or issue of any security by a person resident outside India;
- (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- (d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- (f) deposits between persons resident in India and persons resident outside India;
- (g) export, import or holding of currency or currency notes;
- (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred—
  - (i) by a person resident in India and owed to a person resident outside India; or
  - (ii) by a person resident outside India.

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security

or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

(6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

Export of  
goods and  
services.

7. (1) Every exporter of goods shall—

(a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India;

(b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.

(2) The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.

(3) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

Realisation  
and repatria-  
tion of foreign  
exchange.

8. Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange, within such period and in such manner as may be specified by the Reserve Bank.

Exemption  
from  
realisation and  
repatriation in  
certain cases.

9. The provisions of sections 4 and 8 shall not apply to the following, namely:—

(a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify;

(b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;

(c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;

(d) foreign-exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising therefrom;

(e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and

(f) such other receipts in foreign exchange as the Reserve Bank may specify.

## CHAPTER III

## AUTHORISED PERSON

10. (1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

Authorised person.

(2) An authorisation under this section shall be in writing and shall be subject to the conditions laid down therein.

(3) An authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that—

(a) it is in public interest so to do; or

(b) the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder.

Provided that no such authorisation shall be revoked on any ground referred to in clause (b) unless the authorised person has been given a reasonable opportunity of making a representation in the matter.

(4) An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.

(5) An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.

(6) Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorised person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

11. (1) The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.

Reserve Bank's powers to issue directions to authorised person.

(2) The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, direct any authorised person to furnish such information, in such manner, as it deems fit.

(3) Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve



Power of  
Reserve Bank  
to inspect  
authorised  
person.

Bank may, after giving reasonable opportunity of being heard, impose on the authorised person a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

12. (1) The Reserve Bank may, at any time, cause an inspection to be made, by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, of the business of any authorised person as may appear to it to be necessary or expedient for the purpose of—

(a) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;

(b) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so;

(c) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

(2) It shall be the duty of every authorised person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under sub-section (1), such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct.

#### CHAPTER IV

##### CONTRAVENTION AND PENALTIES

Penalties.

13. (1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

(2) Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

*Explanation.*—For the purposes of this sub-section, “property” in respect of which contravention has taken place, shall include—

(a) deposits in a bank, where the said property is converted into such deposits;

(b) Indian currency, where the said property is converted into that currency; and

(c) any other property which has resulted out of the conversion of that property.

Enforcement  
of the orders  
of Adjudicat-  
ing Authority.

14. (1) Subject to the provisions of sub-section (2) of section 19, if any person fails to make full payment of the penalty imposed on him under section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.

(2) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudicating Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Adjudicating Authority, for reasons in writing, is satisfied—

(a) that the defaulter, with the object or effect of obstructing the recovery of penalty, has after the issue of notice by the Adjudicating Authority, dishonestly transferred, concealed, or removed any part of his property, or



(b) that the defaulter has, or has had since the issuing of notice by the Adjudicating Authority, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(3) Notwithstanding anything contained in sub-section (1), a warrant for the arrest of the defaulter may be issued by the Adjudicating Authority if the Adjudicating Authority is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.

(4) Where appearance is not made pursuant to a notice issued and served under sub-section (1), the Adjudicating Authority may issue a warrant for the arrest of the defaulter.

(5) A warrant of arrest issued by the Adjudicating Authority under sub-section (3) or sub-section (4) may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may for the time being be found.

(6) Every person arrested in pursuance of a warrant of arrest under this section shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

*Explanation.*—For the purposes of this sub-section, where the defaulter is a Hindu undivided family, the *karta* thereof shall be deemed to be the defaulter.

(7) When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority under this section, the Adjudicating Authority shall give the defaulter an opportunity showing cause why he should not be committed to the civil prison.

(8) Pending the conclusion of the inquiry, the Adjudicating Authority may, in his discretion, order the defaulter to be detained in the custody of such officer as the Adjudicating Authority may think fit or release him on his furnishing the security to the satisfaction of the Adjudicating Authority for his appearance as and when required.

(9) Upon the conclusion of the inquiry, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give a defaulter an opportunity of satisfying the arrears, the Adjudicating Authority may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Adjudicating Authority for his appearance at the expiration of the specified period if the arrears are not satisfied.

(10) When the Adjudicating Authority does not make an order of detention under sub-section (9), he shall, if the defaulter is under arrest, direct his release.

(11) Every person detained in the civil prison in execution of the certificate may be so detained,—

(a) where the certificate is for a demand of an amount exceeding rupees one crore, up to three years, and

(b) in any other case, up to six months:

Provided that he shall be released from such detention on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison.

(12) A defaulter released from detention under this section shall not, merely by reason of his release, be discharged from his liability for the arrears, but he shall not be liable to be arrested under the certificate in execution of which he was detained in the civil prison.

(13) A detention order may be executed at any place in India in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, 1973.

Power to  
compound  
contravention.

15. (1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed.

(2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

#### CHAPTER V

##### ADJUDICATION AND APPEAL

Appointment of  
Adjudicating  
Authority.

16. (1) For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under section 13, against whom a complaint has been made under sub-section (2) (hereinafter in this section referred to as the said person) a reasonable opportunity of being heard for the purpose of imposing any penalty:

Provided that where the Adjudicating Authority is of opinion that the said person is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct the said person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit.

(2) The Central Government shall, while appointing the Adjudicating Authorities under sub-section (1), also specify in the order published in the Official Gazette, their respective jurisdictions.

(3) No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.

(4) The said person may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority.

(5) Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and—

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code;

45 of 1860.

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

2 of 1974.

(6) Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavor shall be made to dispose of the complaint finally within one year from the date of receipt of the complaint:

Provided that where the complaint cannot be disposed of within the said period, the Adjudicating Authority shall record periodically the reasons in writing for not disposing of the complaint within the said period.

Appeal to  
Special  
Director  
(Appeals).

17. (1) The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities under this section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.

(2) Any person aggrieved by an order made by the Adjudicating Authority, being an Assistant Director of Enforcement or a Deputy Director of Enforcement, may prefer an appeal to the Special Director (Appeals).

(3) Every appeal under sub-section (1) shall be filed within forty-five days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Special Director (Appeals) may entertain an appeal after the expiry of the said period of forty-five days, if he is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Special Director (Appeals) may after giving the parties to the appeal an opportunity of being heard, pass such order thereon as he thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Special Director (Appeals) shall send a copy of every order made by him to the parties to appeal and to the concerned Adjudicating Authority.

(6) The Special Director (Appeals) shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and—

45 of 1860:

(a) all proceedings before him shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code;

2 of 1974.

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

18. The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and the Special Director (Appeals) under this Act.

Establishment  
of Appellate  
Tribunal.

19. (1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:

Appeal to  
Appellate  
Tribunal.

Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Special Director (Appeals), as the case may be.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where any appeal could not be disposed off within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing off the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the Adjudicating Authority under section 16 in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

Composition of  
Appellate  
Tribunal.

20. (1) The Appellate Tribunal shall consist of a Chairperson and such number of Members as the Central Government may deem fit.

(2) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with one or more Members as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

Qualifications  
for appointment  
of Chairperson,  
Member and  
Special Director  
(Appeals).

21. (1) A person shall not be qualified for appointment as the Chairperson or a Member unless he—

(a) in the case of Chairperson, is or has been, or is qualified to be, a Judge of a High Court; and

(b) in the case of a Member, is or has been, or is qualified to be, a District Judge.

(2) A person shall not be qualified for appointment as a Special Director (Appeals) unless he—

(a) has been a member of the Indian Legal Service and has held a post in Grade I of that Service; or

(b) has been a member of the Indian Revenue Service and has held a post equivalent to a Joint Secretary to the Government of India.

Term of office.

22. The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of sixty-five years;

(b) in the case of any other Member, the age of sixty-two years.

Terms and  
conditions of  
service.

23. The salary and allowances payable to and the other terms and conditions of service of the Chairperson, other Members and the Special Director (Appeals) shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after appointment:

Vacancies.

24. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.



25. (1) The Chairperson or a Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation  
and removal.

Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.

(2) The Chairperson or a Member shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a Member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

26. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Member to act  
as Chairperson  
in certain  
circumstances.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

27. (1) The Central Government shall provide the Appellate Tribunal and the Special Director (Appeals) with such officers and employees as it may deem fit.

Staff of  
Appellate  
Tribunal and  
Special  
Director  
(Appeals).

(2) The officers and employees of the Appellate Tribunal and office of the Special Director (Appeals) shall discharge their functions under the general superintendence of the Chairperson and the Special Director (Appeals), as the case may be.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal and office of the Special Director (Appeals) shall be such as may be prescribed.

5 of 1908.

28. (1) The Appellate Tribunal and the Special Director (Appeals) shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal and the Special Director (Appeals) shall have powers to regulate its own procedure.

Procedure  
and powers of  
Appellate  
Tribunal and  
Special  
Director  
(Appeals).

5 of 1908.

(2) The Appellate Tribunal and the Special Director (Appeals) shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

1 of 1872.

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation of default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(i) any other matter which may be prescribed by the Central Government.

(3) An order made by the Appellate Tribunal or the Special Director (Appeals) under this Act shall be executable by the Appellate Tribunal or the Special Director (Appeals) as a decree of civil court and, for this purpose, the Appellate Tribunal and the Special Director (Appeals) shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal

or the Special Director (Appeals) may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal and the Special Director (Appeals) shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

45 of 1860.  
2 of 1974.

Distribution of  
business  
amongst  
Benches.

29. Where Benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Power of  
Chairperson to  
transfer cases.

30. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

Decision to be  
by majority.

31. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Right of  
appellant to  
take assistance  
of legal  
practitioner or  
chartered  
accountant and  
of Government,  
to appoint  
presenting  
officers.

32. (1) A person preferring an appeal to the Appellate Tribunal or the Special Director (Appeals) under this Act may either appear in person or take the assistance of a legal practitioner or a chartered accountant of his choice to present his case before the Appellate Tribunal or the Special Director (Appeals), as the case may be.

(2) The Central Government may authorise one or more legal practitioners or chartered accountants or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal or the Special Director (Appeals), as the case may be.

Members, etc.,  
to be public  
servants.

33. The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Special Director (Appeals) and the Adjudicating Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Civil court not  
to have  
jurisdiction.

34. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Authority or the Appellate Tribunal or the Special Director (Appeals) is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to High  
Court.

35. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

*Explanation.*—In this section "High Court" means—

(a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(b) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondents, any of the respondents, ordinarily resides or carries on business or personally works for gain.

## CHAPTER VI

## DIRECTORATE OF ENFORCEMENT

36. (1) The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purposes of this Act.

Directorate of  
Enforcement.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

(3) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

37. (1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.

Power of  
search,  
seizure, etc.

(2) without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.

43 of 1961.

(3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 and shall exercise such powers, subject to such limitations laid down under that Act.

38. (1) The Central Government may, by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of customs or any central excise officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under this Act as may be stated in the order.

Empowering  
other officers.

43 of 1961.

(2) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on the income-tax authorities under the Income-tax Act, 1961, subject to such conditions and limitations as the Central Government may impose.

## CHAPTER VII

## MISCELLANEOUS

39. Where any document—

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law; or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any contravention under this Act alleged to have been committed by any person,

Presumption as  
to documents  
in certain  
cases.

and such document is tendered in any proceeding under this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the court or the Adjudicating Authority, as the case may be, shall—

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;



(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

Suspension of  
operation of  
this Act.

40. (1) If the Central Government is satisfied that circumstances have arisen rendering it necessary that any permission granted or restriction imposed by this Act should cease to be granted or imposed, or if it considers necessary or expedient so to do in public interest, the Central Government may, by notification, suspend or relax to such extent either indefinitely or for such period as may be notified, the operation of all or any of the provisions of this Act:

(2) Where the operation of any provision of this Act has under sub-section (1) been suspended or relaxed indefinitely, such suspension or relaxation may, at any time while this Act remains in force, be removed by the Central Government by notification.

(3) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

Power of  
Central  
Government to  
give directions.

41. For the purposes of this Act, the Central Government may, from time to time, give to the Reserve Bank such general or special directions as it thinks fit, and the Reserve Bank shall, in the discharge of its functions under this Act, comply with any such directions.

Contravention  
by companies.

42. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section—

(i) "company" means any body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

Death or  
insolvency in  
certain cases.

43. Any right, obligation, liability, proceeding or appeal arising in relation to the provisions of section 13 shall not abate by reason of death or insolvency of the person liable under that section and upon such death or insolvency such rights and obligations shall devolve on the legal representative of such person or the official receiver or the official assignee, as the case may be:

Provided that a legal representative of the deceased shall be liable only to the extent of the inheritance or estate of the deceased.



44. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Reserve Bank or any officer of that Government or of the Reserve Bank or any other person exercising any power or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

Bar of legal proceedings.

45. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything not inconsistent with the provisions of this Act for the purpose of removing the difficulty:

Removal of difficulties.

Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

46. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for,—

(a) the imposition of reasonable restrictions on current account transactions under section 5;

(b) the manner in which the contravention may be compounded under sub-section (1) of section 15;

(c) the manner of holding an inquiry by the Adjudicating Authority under sub-section (1) of section 16;

(d) the form of appeal and fee for filing such appeal under sections 17 and 19;

(e) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal and the Special Director (Appeals) under section 23;

(f) the salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal and the office of the Special Director (Appeals) under sub-section (3) of section 27;

(g) the additional matters in respect of which the Appellate Tribunal and the Special Director (Appeals) may exercise the powers of a civil court under clause (i) of sub-section (2) of section 28;

(h) the authority or person and the manner in which any document may be authenticated under clause (ii) of section 39; and

(i) any other matter which is required to be, or may be, prescribed.

47. (1) The Reserve Bank may, by notification, make regulations to carry out the provisions of this Act and the rules made thereunder.

Power to make regulations.

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for,—

(a) the permissible classes of capital account transactions, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of certain capital account transactions under section 6;

(b) the manner and the form in which the declaration is to be furnished under clause (a) of sub-section (1) of section 7;

(c) the period within which and the manner of repatriation of foreign exchange under section 8;

(d) the limit up to which any person may possess foreign currency or foreign coins under clause (a) of section 9;

(e) the class of persons and the limit up to which foreign currency account may be held or operated under clause (b) of section 9;

(f) the limit up to which foreign exchange acquired may be exempted under clause (d) of section 9;

(g) the limit up to which foreign exchange acquired may be retained under clause (e) of section 9;

(h) any other matter which is required to be, or may be, specified.

Rules and regulations to be laid before Parliament.

48. Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Repeal and saving.

49. (1) The Foreign Exchange Regulation Act, 1973 is hereby repealed and the Appellate Board constituted under sub-section (1) of section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.

46 of 1973.

(2) On the dissolution of the said Appellate Board, the person appointed as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

(3) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act.

(4) Subject to the provisions of sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed.

(5) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;

(c) every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement :

Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

10 of 1897.

(6) Save as otherwise provided in sub-section (3), the mention of particular matters in sub-sections (2), (4) and (5) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.

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# The Gujarat Government Gazette

## EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

### PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar. 8th June, 2000.

No. : RP/29/2000/Act-44/99/E. - The following Act of Parliament is re-published for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,  
(Legislative Department)

New Delhi, the 30th December, 1999 / Pausa 9, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 30th December, 1999 and is hereby published for general information :-

THE NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM,  
CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES  
ACT, 1999.

(Act No. 44 of 1999)

(30th December, 1999)

#### AN ACT

*to provide for the constitution of a body at the national level for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities and for matters connected therewith or incidental thereto.*

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

#### CHAPTER I

##### PRELIMINARY

1. (1) This Act may be called the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

Short title and extent.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "autism" means a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behaviour;

(b) "Board" means Board of trustees constituted under section 3;

(c) "cerebral palsy" means a group of non-progressive conditions of a person



characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, perinatal or infant period of development;

(d) "Chairperson" means the Chairperson of the Board appointed under clause (a) of sub-section (4) of section 3;

(e) "Chief Executive Officer" means the Chief Executive Officer appointed under sub-section (1) of section 8;

(f) "Member" means a Member of the Board and includes the Chairperson;

(g) "mental retardation" means a condition of arrested or incomplete development of mind of a person which is specially characterised by sub-normality of intelligence;

(h) "multiple disabilities" means a combination of two or more disabilities as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995;

1 of 1996.

(i) "notification" means a notification published in the Official Gazette;

(j) "person with disability" means a person suffering from any of the conditions relating to autism, cerebral palsy, mental retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple disability;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "professional" means a person who is having special expertise in a field which would promote the welfare of persons with disability;

(m) "registered organisation" means an association of persons with disability or an association of parents of persons with disability or a voluntary organisation, as the case may be, registered under section 12;

(n) "regulations" means the regulations made by the Board under this Act;

(o) "severe disability" means disability with eighty per cent. or more of one or more of multiple disabilities;

(p) "Trust" means the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability constituted under sub-section (1) of section 3.

## CHAPTER II

### THE NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITY

Constitution of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability, etc.

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be constituted, for the purposes of this Act, a body by the name of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, which shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(2) The general superintendence, direction and management of the affairs and business of the Trust shall vest in a Board which may exercise all powers and do all acts and things which may be exercised or done by the Trust.

(3) The head office of the Trust shall be at New Delhi and the Board may, with the previous approval of the Central Government, establish offices at other places in India.

(4) The Board shall consist of—

(a) a Chairperson to be appointed by the Central Government from amongst the persons having expertise and experience in the field of autism, cerebral palsy, mental retardation and multiple disability;

(b) nine persons to be appointed in accordance with such procedure as may be prescribed from amongst the registered organisations out of which three members each shall be from voluntary organisations, association of parents of persons with

autism, cerebral palsy, mental retardation and multiple disability and from association of persons with disability, Members:

Provided that initial appointment under this clause shall be made by the Central Government by nomination;

(c) eight persons not below the rank of Joint Secretary to the Government of India nominated by that Government to represent the Ministries or Departments of Social Justice and Empowerment, Women and Child Development, Health and Family Welfare, Finance, Labour, Education, Urban Affairs and Employment and Rural Employment and Poverty Alleviation, Members, *ex officio*;

(d) three persons to be nominated by the Board representing the associations of trade, commerce and industry engaged in philanthropic activities, Members;

(e) the Chief Executive Officer, who, shall be of the rank of Joint Secretary to the Government of India, Member-Secretary, *ex officio*.

(5) The Board may associate with itself, in such manner and for such purposes as may be determined by regulations, any person whose assistance or advice it may desire for carrying out the objects of the Trust:

Provided that such person shall have a right to take part in the discussions relevant to that purpose but shall not have a right to vote at a meeting of the Board and shall not be a member for any other purpose:

Provided further that the maximum number of persons so associated shall not exceed eight and so far as possible, the person so associated shall belong to the registered organisation or from the professionals.

4. (1) The Chairperson or a Member shall hold office for a term of three years from the date of his appointment or until his successor shall have been duly appointed, whichever is longer:

Term of office of Chairperson and Members, meeting of Board, etc.

Provided that no person shall hold office as the Chairperson or other Member after he has attained the age of sixty-five years.

(2) The conditions of service of the Chairperson and other Members shall be such as may be prescribed.

(3) A casual vacancy in the Board shall be filled in accordance with the provisions of section 3 and a person appointed shall hold office only for the remainder of the term for which the member, in whose place he was appointed, would have held that office.

(4) Before appointing any person as the Chairperson or a Member, the Central Government shall satisfy itself that the person does not and will not, have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

(5) No Member of the Board shall be a beneficiary of the Trust during the period such Member holds office.

(6) The Board shall meet at least once in three months at such time and place as may be determined by the Board by regulations and shall observe such rules of procedure in the transaction of business at a meeting as may be prescribed.

(7) The Chairperson, if for any reason is unable to attend the meeting of the Board, any Member elected by the Members present from amongst themselves at the meeting, shall preside at the meeting.

(8) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the person presiding shall have a second or casting vote.

5. (1) The Chairperson may resign his office by writing under his hand addressed to the Central Government:

Resignation of Chairperson and Members.

Provided that the Chairperson shall continue in office until the appointment of his successor is made by the Central Government.

(2) A Member may resign from office by writing under his hand addressed to the Chairperson.

Disqualifi-  
cations.

6. No person shall be a Member if he—

- (a) is, or becomes, of unsound mind or is so declared by a competent court; or
- (b) is, or has been, convicted of an offence, which in the opinion of the Central Government, involves moral turpitude; or
- (c) is, or at any time has been, adjudicated as an insolvent.

Vacation of  
office by  
Members.

7. If a member—

- (a) becomes subject to any of the disqualifications mentioned in section 6; or
- (b) is, without obtaining leave of absence, absent from three consecutive meetings of the Board; or
- (c) tenders his resignation under section 5,

his seat shall thereupon become vacant.

Chief  
Executive  
Officer and  
staff of Trust.

8. (1) The Central Government shall appoint the Chief Executive Officer to exercise such powers and perform such duties under the direction of the Board as may be prescribed or as may be delegated to him by the Chairperson.

(2) The Board shall, with the previous approval of the Central Government, appoint such other officers and employees as it considers necessary to carry out the objectives of the Trust.

(3) The salary and allowances payable to, and the other terms and conditions of service of, the Chief Executive Officer, other officers and employees of the Trust shall be such as may be determined by regulations.

Vacancies in  
Board not to  
invalidate acts,  
etc.

9. No act or proceeding of the Board shall be called in question on the grounds merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

### CHAPTER III

#### OBJECTS OF THE TRUST

Objects of  
Trust.

10. The objects of the Trust shall be—

- (a) to enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they belong;
- (b) to strengthen facilities to provide support to persons with disability to live within their own families;
- (c) to extend support to registered organisations to provide need based services during the period of crisis in the family of persons with disability;
- (d) to deal with problems of persons with disability who do not have family support;
- (e) to promote measures for the care and protection of persons with disability in the event of death of their parent or guardian;
- (f) to evolve procedure for the appointment of guardians and trustees for persons with disability requiring such protection;
- (g) to facilitate the realisation of equal opportunities, protection of rights and full participation of persons with disability; and
- (h) to do any other act which is incidental to the aforesaid objects.

## CHAPTER IV

## POWERS AND DUTIES OF THE BOARD

## 11. (1) The Board shall,—

Powers and  
duties of  
Board.

(a) receive from the Central Government a one-time contribution of rupees one hundred crores for a corpus, the income whereof shall be utilised to provide for adequate standard of living for persons with disability;

(b) receive bequest of movable property from any person for the benefit of the persons with disability in general and for furtherance of the objectives of the Trust in particular:

Provided that it shall be obligatory on the part of the Board to make arrangement for adequate standard of living for the beneficiary named in the bequest, if any, and to utilise the property bequeathed for any other purpose for which the bequest has been made:

Provided further that the Board shall not be under any obligation to utilise the entire amount mentioned in the bequest for the exclusive benefit of the persons with disability named as beneficiary in the bequest;

(c) receive from the Central Government such sums as may be considered necessary in each financial year for providing financial assistance to registered organisations for carrying out any approved programme.

(2) For the purposes of sub-section (1), the expression "approved programme" means—

(a) any programme which promotes independent living in the community for persons with disability by—

(i) creating a conducive environment in the community;

(ii) counselling and training of family members of persons with disability;

(iii) setting up of adult training units, individual and group homes;

(b) any programme which promotes respite care, foster family care or day care service for persons with disability;

(c) setting up of residential hostels and residential homes for persons with disability;

(d) development of self-help groups of persons with disability to pursue the realisation of their rights;

(e) setting up of local level committee to grant approval for guardianship; and

(f) such other programmes which promote the objectives of the Trust.

(3) While earmarking funds for the purposes of clause (c) of sub-section (2), preference shall be given to women with disability or to persons with severe disability and to senior citizens with disability.

*Explanation.*—For the purposes of this sub-section, the expression,—

(a) "persons with severe disability" shall have the same meaning as is assigned to it under sub-section (4) of section 56 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995;

(b) "senior citizen" means a person who is above the age of sixty-five years or more.



## CHAPTER V

## PROCEDURE FOR REGISTRATION

Procedure for  
registration.

12. (1) Any association of persons with disability, or any association of parents of persons with disability or a voluntary organisation whose main object is promotion of welfare of persons with disability may make an application for registration to the Board.

(2) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain such particulars and accompanied with such documents and such fees as may be provided in the regulations.

(3) On receipt of application for registration, the Board may make such enquiries as it thinks fit in respect of genuineness of the application and correctness of any particulars thereon.

(4) Upon receipt of such application the Board shall either grant registration to the applicant or reject such application for reasons to be recorded in writing:

Provided that where registration has been refused to the applicant, the said applicant may again make an application for registration after removing defects, if any, in its previous application.

## CHAPTER VI

## LOCAL LEVEL COMMITTEES

Constitution of  
local level  
committees

13. (1) The Board shall constitute a local level committee for such area as may be specified by it from time to time.

(2) A local level committee shall consist of—

(a) an officer of the civil service of the Union or of the State, not below the rank of a District Magistrate or a District Commissioner of a district;

(b) a representative of a registered organisation; and

(c) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

1 of 1996.

(3) A local level committee shall continue to work for a period of three years from the date of its constitution or till such time it is reconstituted by the Board.

(4) A local level committee shall meet at least once in every three months or at such interval as may be necessary.

Appointment  
for  
guardianship.

14. (1) A parent of a person with disability or his relative may make an application to the local level committee for appointment of any person of his choice to act as a guardian of the persons with disability.

(2) Any registered organisation may make an application in the prescribed form to the local level committee for appointment of a guardian for a person with disability:

Provided that no such application shall be entertained by the local level committee, unless the consent of the guardian of the disabled person is also obtained.

(3) While considering the application for appointment of a guardian, the local level committee shall consider—

(a) whether the person with disability needs a guardian;

(b) the purposes for which the guardianship is required for person with disability.

(4) The local level committee shall receive, process and decide applications received under sub-sections (1) and (2), in such manner as may be determined by regulations:

Provided that while making recommendation for the appointment of a guardian, the local level committee shall provide for the obligations which are to be fulfilled by the guardian.

(5) The local level committee shall send to the Board the particulars of the applications received by it and orders passed thereon at such interval as may be determined by regulations.

15. Every person appointed as a guardian of a person with disability under this Chapter shall, wherever required, either have the care of such person of disability and his property or be responsible for the maintenance of the person with disability.

Duties of guardian.

16. (1) Every person appointed as a guardian under section 14 shall, within a period of six months from the date of his appointment, deliver to the authority which appointed him, an inventory of immovable property belonging to the person with disability and all assets and other movable property received on behalf of the person with disability, together with a statement of all claims due to and all debts and liabilities due by such person with disability.

Guardian to furnish inventory and annual accounts.

(2) Every guardian shall also furnish to the said appointing authority within a period of three months at the close of every financial year, an account of the property and assets in his charge, the sums received and disbursed on account of the person with disability and the balance remaining with him.

17. (1) Whenever a parent or a relative of a person with disability or a registered organisation finds that the guardian is—

Removal of guardian.

(a) abusing or neglecting a person with disability; or

(b) misappropriating or neglecting the property,

it may in accordance with the prescribed procedure apply to the committee for the removal of such guardian.

(2) Upon receiving such application the committee may, if it is satisfied that there is a ground for removal and for reasons to be recorded in writing, remove such guardian and appoint a new guardian in his place or if such a guardian is not available make such other arrangements as may be necessary for the care and protection of person with disability.

(3) Any person removed under sub-section (2) shall be bound to deliver the charge of all property of the person with disability to the new guardian, and to account for all moneys received or disbursed by him.

*Explanation.*—For the purposes of this Chapter, the expression “relative” includes any person related to the person with disability by blood, marriage or adoption.

## CHAPTER VII

### ACCOUNTABILITY AND MONITORING

18. (1) The books and documents in the possession of the Board shall be open to inspection by any registered organisation.

Accountability.

(2) Any registered organisation can submit a written requisition to the Board for getting a copy of any book or document maintained by the Board.

(3) The Board shall frame such regulations as it thinks necessary for allowing the access of any book or document to a registered organisation.

19. The Board shall determine by regulations the procedure for evaluating the prefunding status of registered organisations seeking financial assistance from it and such regulations may also provide for the guidelines for monitoring and evaluating the activities of the registered organisations who are receiving financial assistance from the Trust.

Monitoring.

20. (1) The Board shall in each year hold an annual general meeting of registered organisations, and not more than six months shall elapse between the date of one annual general meeting and that of the next.

Annual general meeting.

(2) A notice of the annual general meeting along with a statement of accounts and records of its activities during the preceding year shall be sent by the Board to every registered organisation at such time as may be determined by regulations.

(3) The quorum for such meeting shall be such number of persons of the registered organisations as may be determined by regulations.

## CHAPTER VIII

### FINANCE, ACCOUNTS AND AUDIT

Grants by the  
Central  
Government.

21. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Trust a one-time contribution of rupees one hundred crores for a corpus, the income whereof may be utilised to achieve the objects of the Trust under this Act.

Fund.

22. (1) There shall be constituted a Fund to be called the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Fund and there shall be credited thereto—

(a) all moneys received from the Central Government;

(b) all moneys received by the Trust by way of grants, gifts, donations, benefactions, bequests or transfers;

(c) all moneys received by the Trust in any other manner or from any other source.

(2) All moneys belonging to the fund shall be deposited in such banks or invested in such manner as the Board may, subject to the approval of the Central Government, decide.

(3) The funds shall be applied towards meeting the administrative and other expenses of the Trust including expenses incurred in the exercise of its powers and performance of duties by the Board in relation to any of its activities under section 10 or for anything relatable thereto.

Budget.

23. The Board shall prepare, in such form and at such time in each financial year as may be prescribed, the budget for the next financial year showing the estimated receipt and expenditure of the Trust and shall forward the same to the Central Government.

Accounts and  
audit.

24. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts of the Trust including the income and expenditure accounts in such form as the Central Government may prescribe and in accordance with such general direction as may be issued by that Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Trust shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred by him in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Trust shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts and in particular, shall have the right to demand the production of books of account, connected vouchers and other documents and papers and to inspect any of the offices of the Trust.

(4) The accounts of the Trust as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government, and that Government shall cause the same to be laid before each House of Parliament.

Annual report.

25. The Board shall prepare every year, in such form and within such time as may be prescribed an annual report giving a true and full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

26. All orders and decisions of the Board and instruments issued in the name of the Trust shall be authenticated by the signature of the Chairperson, the Chief Executive Officer or any other officer authorised by the Chairperson in this behalf.

Authentication of orders, etc.

27. The Board shall furnish to the Central Government such reports, returns and other information as that Government may require from time to time.

Returns and information.

## CHAPTER IX

### MISCELLANEOUS

28. (1) Without prejudice to the foregoing provisions of this Act, the Board shall, in exercise of its powers or the performance of its duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Power of Central Government to issue directions.

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

29. (1) If the Central Government on the complaint of a registered organisation or otherwise has reason to believe that the Board is unable to perform or has persistently made default in the performance of the duties imposed on it, the Central Government may issue notice to the Board asking why it should not be superseded:

Power of Central Government to supersede Board.

Provided that no order superseding the Board shall be made by the Central Government, unless a notice affording reasonable opportunity to the Board has been given in writing that why it should not be superseded.

(2) The Central Government after recording reasons in writing and by issuing a notification in the Official Gazette supersede the Board for a period of not more than six months:

Provided that on the expiration of the period of supersession, the Central Government may reconstitute the Board, in accordance with section 3.

(3) Upon the publication of the notification under sub-section (2),—

(a) all the members of the Board shall, notwithstanding that their term of office had not expired as on the date of supersession, vacate their office as such members;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Trust shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct.

(4) On the expiration of the period of supersession specified in the notification issued under sub-section (2), the Central Government may—

(a) extend the period of supersession for such further period as it may consider necessary so that the total period of supersession does not exceed more than six months; or

(b) reconstitute the Board in the manner provided in section 3.

43 of 1961.

30. Notwithstanding anything contained in the Income-tax Act, 1961, or any other law for the time being in force relating to tax on income, profits or gains, the Trust shall not be liable to pay income-tax or any other tax in respect of its income, profits or gains derived.

Exemption from tax on income.

31. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Trust or any member of the Board or Chief Executive Officer or any officer or other employee of the Trust or any other person authorised by the Board to perform duties under this Act for any loss or damage caused or likely to be caused by anything which is done in good faith.

Protection of action taken in good faith.

45 of 1860.

*Explanation.*—For the purposes of this section, the expression “good faith” shall have the same meaning as is assigned to it in the Indian Penal Code.



Chairperson,  
Members and  
officers of  
Trust to be  
public  
servants.  
Delegation.

32. All Members, Chief Executive Officer, other officers and employees of the Trust shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

33. The Board may, by general or special order in writing, delegate to the Chairperson or any member or any officer of the Trust or any other person subject to such conditions and limitations, if any, as may be specified in the order such of its powers under this Act (except the power to make regulations under section 35) as it may deem necessary.

Power to make  
rules.

34. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the procedure in accordance with which the persons representing registered organisation shall be elected under clause (b) of sub-section (4) of section 3;

(b) the conditions of service of the Chairperson and Members under sub-section (2) of section 4;

(c) the rules of procedure in the transaction of business at meetings of the Board under sub-section (6) of section 4;

(d) the powers and duties of the Chief Executive Officer under sub-section (1) of section 8;

(e) the form in which an application for guardianship may be made by a registered organisation under sub-section (2) of section 14;

(f) the procedure in accordance with which a guardian may be removed under section 17;

(g) the form in which, and the time within which, the budget of the Trust shall be forwarded to the Central Government under section 23;

(h) the form in which the annual statement of accounts shall be maintained under sub-section (1) of section 24;

(i) the form in which, and the time within which, the annual reports shall be prepared and forwarded under section 25;

(j) any other matter which is required to be, or may be, prescribed.

Power to make  
regulations.

35. (1) The Board may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and rules generally to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the manner and purpose for which a person may be associated under sub-section (5) of section 3;

(b) the time and place at which the Board shall meet under sub-section (6) of section 4;

(c) the terms and conditions of service of, Chief Executive Officer, other officers and employees of the Trust under sub-section (3) of section 8;

(d) the form and manner in which the application shall be made for registration under sub-section (2) of section 12 and the particulars which such application shall contain under that sub-section;

(e) the manner in which application for guardianship shall be received, processed and decided by the local level committee under sub-section (4) of section 14;

(f) the particulars of applications and orders passed thereon by the local level committee under sub-section (5) of section 14;

(g) the procedure for evaluating the pre-funding status of the registered organisations and framing of guidelines for monitoring and evaluating the activities of such registered organisations under section 19;

(h) the time within which notice for annual general meeting shall be sent and quorum for such meeting under sub-sections (2) and (3) of section 20; and

(i) any other matter which is required to be, or may be, provided by regulations.

36. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Rules and regulations to be laid before Parliament.

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.



सत्यमेव जयते

# The Gujarat Government Gazette

## EXTRAORDINARY

PUBLISHED BY AUTHORITY

VOL. XLI ] THURSDAY, JUNE, 8, 2000/JYAISTHA 18, 1922

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

### PART - VI

#### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar. 8th June, 2000.

No.: RP/30/2000/Act-45/99/E. - The following Act of Parliament is re-published for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department)

New Delhi, the 30th December, 1999 / Pausa 9, 1921 (Saka).

The following Act of Parliament received the assent of the President on the 30th December, 1999 and is hereby published for general information :-

#### THE VICE-PRESIDENT'S PENSION (AMENDMENT) ACT, 1999.

(Act No. 45 of 1999)

(30th December, 1999)

#### AN ACT

to amend the Vice-President's Pension Act, 1997.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. This Act may be called the Vice-President's Pension (Amendment) Act, 1999.

Short title.

2. In section 2 of the Vice-President's Pension Act, 1997,—

Amendment of section 2.

(a) in sub-section (1), for the words "six thousand two hundred and fifty rupees", the words "twenty thousand rupees" shall be substituted and shall be deemed to have been substituted with effect from the 28th day of May, 1997;

(b) in sub-section (2),—

(i) for clause (a), the following clause shall be substituted, namely:—

“(a) to the use without payment of rent of such furnished residence (including its maintenance), as the Central Government may determine from time to time;”;

(ii) in clause (c), for the words “rupees six thousand”, the words “rupees twelve thousand” shall be substituted;

(iii) for clause (f), the following clause shall be substituted, namely:—

“(f) to travel anywhere in India, accompanied by spouse or a companion or a relative, by the highest class by air, rail or steamer;”;

30 of 1997.

(c) after sub-section (2), the following sub-sections shall be inserted, namely:—

"(3) Where any such person is re-elected to the office of Vice-President, he or his spouse shall not be eligible to any benefit under this section for the period during which such person again holds such office.

(4) Where any person being a Vice-President gets elected to the office of the President of India, he or his spouse shall not be eligible to any benefit under this section."

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.





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## PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar. 8th June, 2000.

No. : RP/31/2000/Act-46/99/E.- The following Act of Parliament is re-published for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,  
(Legislative Department)

New Delhi, the 30th December, 1999 / Pausa 9, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 30th December, 1999 and is hereby published for general information :-

THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999.

(Act No. 46 of 1999)

(30th December, 1999)

AN ACT

to amend the Code of Civil Procedure, 1908, the Limitation Act, 1963  
and the Court Fees Act, 1870.

Enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

### CHAPTER I

#### PRELIMINARY

1. (1) This Act may be called the Code of Civil Procedure (Amendment) Act, 1999.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States or for different parts thereof.

Short title and  
commencement.

## CHAPTER II

## AMENDMENT OF SECTIONS

Amendment of section 26. 2. In the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), existing section 26 shall be re-numbered as sub-section (I), and after sub-section (I) as so renumbered, the following sub-section shall be inserted, namely:—

5 of 1908.

"(2) In every plaint, facts shall be proved by affidavit."

Amendment of section 27. 3. In section 27 of the principal Act, the following words shall be inserted at the end, namely:—

"on such day not beyond thirty days from date of the institution of the suit".

Amendment of section 32. 4. In section 32 of the principal Act, in clause (c), for the words "not exceeding five hundred rupees", the words "not exceeding five thousand rupees" shall be substituted.

Amendment of section 58. 5. In section 58 of the principal Act,—

(i) in sub-section (I),—

(a) in clause (a), for the words "one thousand rupees", the words "five thousand rupees" shall be substituted;

(b) for clause (b), the following clause shall be substituted, namely:—

"(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks:";

(ii) in sub-section (IA), for the words "five hundred rupees", the words "two thousand rupees" shall be substituted.

Amendment of section 60. 6. In section 60 of the principal Act, in the first proviso to sub-section (I), in clause (i), for the words "four hundred rupees", the words "one thousand rupees" shall be substituted.

Insertion of new section 89. 7. In the principal Act, after section 88, the following section shall be inserted, namely:—

Settlement of disputes outside the Court. "89. (I) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for—

(a) arbitration;

(b) conciliation;

(c) judicial settlement including settlement through Lok Adalat; or

(d) mediation.

(2) Where a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

26 of 1996.

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (I) of section 20 of the Legal Services Authority Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

39 of 1987.

39 of 1987.

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."

8. In section 95 of the principal Act, in sub-section (1), for the words "not exceeding one thousand rupees", the words "not exceeding fifty thousand rupees" shall be substituted.

Amendment of section 95.

9. In section 96 of the principal Act, in sub-section (4), for the words "three thousand rupees", the words "ten thousand rupees" shall be substituted.

Amendment of section 96.

10. For section 100A of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 100A.

"100A. Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force,—

No further appeal in certain cases.

(a) where any appeal from an original or appellate decree or order is heard and decided,

(b) where any writ, direction or order is issued or made on an application under article 226 or article 227 of the Constitution,

by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge."

11. For section 102 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 102.

"102. No second appeal shall lie from any decree, when the amount or value of the subject-matter of the original suit does not exceed twenty-five thousand rupees."

No second appeal in certain cases.

12. In section 115 of the principal Act, in sub-section (1),—

Amendment of section 115.

(i) for the proviso, the following proviso shall be substituted, namely:—

"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

(ii) after sub-section (2), but before the *Explanation*, the following sub-section shall be inserted, namely:—

"(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court."

13. In section 148 of the principal Act, after the words "such period", the words ", not exceeding thirty days in total," shall be inserted.

Amendment of section 148.

### CHAPTER III

#### AMENDMENT OF ORDERS

14. In the First Schedule to the principal Act (hereinafter referred to as the First Schedule), in Order IV, in rule 1,—

Amendment of Order IV.

(i) in sub-rule (1), for the words "plaint to the Court", the words "plaint in duplicate to the Court" shall be substituted;

(ii) after sub-rule (2), the following sub-rule shall be inserted, namely:—

"(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2)."

Amendment of  
Order V.

15. In the First Schedule, in Order V,—

(i) in rule 1, for sub-rule (1), the following shall be substituted, namely:—

"(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, on such day within thirty days from the day of institution of the suit as may be specified therein:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim:

Provided further that where the defendant fails to file the written statement on the said day, he shall be allowed to file the same on such other day which shall not be beyond thirty days from the date of service of summons on the defendant, as the court may think fit.":

(ii) for rule 2, the following shall be substituted, namely:—

"2. Every summon shall be accompanied by a copy of the plaint.":

Copy of plaint  
annexed to  
summons.

(iii) in rule 6, for the words "for the appearance of the defendant", the words, brackets and figures "under sub-rule (1) of rule 1" shall be substituted;

(iv) in rule 7, for the words "all documents", the words, figure and letter "all documents or copies thereof specified in rule 1A of Order VIII" shall be substituted;

(v) for rule 9, the following rules shall be substituted, namely:—

"9. (1) The court shall issue summons and deliver the same to the plaintiff or his agent, for service, and direct the summons to be served by registered post acknowledgment due or by speed post or by such courier service as may be approved by the High Court or by fax message or by Electronic Mail Service or by such other means as the High Court may prescribe by rules, addressed to the defendant to accept the service at the place where the defendant or his agent actually and voluntarily resides or carries on business or personally works for gain.

(2) The plaintiff or his agent shall send the summons by any means as directed by the court under sub-rule (1) within two days from the delivery of summons to the plaintiff by the court under that sub-rule.

(3) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent received by the court or postal article containing the summons is received back by the court with an endorsement purporting to have been made by a postal employee or by any authorised person to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or refused to accept the summons by any other means specified in sub-rule (1), when tendered or transmitted to him the court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or misled or for any other reasons has not been received by the court on the date fixed by it.

Delivery of  
summons to the  
plaintiff or his  
agent.



9A. (1) The court may, in addition to, and simultaneously with the delivery of summons for service to the plaintiff as provided in the manner provided in rule 9, may also direct that summons to be served on the defendant or his agent empowered to accept the service at the place where the defendant or his agent actually and voluntarily resides or carries on business or personally works for gain.

Simultaneous issue of summons for service by the court controlled process.

(2) The summons shall, unless the court otherwise direct, be delivered or sent to the proper officer in such manner as may be prescribed by the High Court to be served by him or one of his subordinates.

(3) The proper officer may be an officer of the court other than that in which the suit is instituted, and where he is such an officer, the summons may be sent to him in such manner as the court may direct.

(4) The proper officer may serve the summons by registered post acknowledgment due, by speed post, by such courier service as may be approved by the High Court, by fax message, by Electronic Mail service or by such other means as may be provided by the rules made by the High Court."

(vi) rule 19A shall be omitted;

(vii) in rule 21, for the words "or by post", the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted;

(viii) in rule 24, for the words "by post or otherwise", the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted;

(ix) in rule 25, for the words "by post", the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted.

16. In the First Schedule, in Order VI,—

(i) rule 5 shall be omitted;

(ii) in rule 15, after sub-rule (3), the following sub-rule shall be inserted, namely:—

"(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings."

(iii) rules 17 and 18 shall be omitted.

17. In the First Schedule, in Order VII,—

(i) for rule 9, the following rule shall be substituted, namely:—

"9. (1) Where the plaint is admitted, the court shall give to the plaintiff summons in the name of all the defendants to be served upon or get served in the manner provided under Order V.

(2) Within two days of the receipt of summons under sub-rule (1), the plaintiff shall send or cause to send the summons to the defendants along with the copy of the plaint in the manner provided under Order V.

(3) Where the court orders that the summons be served on the defendants in the manner provided in rule 9A of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants

Amendment of Order VI.

Amendment of Order VII.

Procedure on admitting plaint.

within two days from the date of such order along with requisite fee for service of summons on the defendants."

(ii) in rule 11, after sub-clause (d), the following sub-clauses shall be inserted, namely:—

"(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply sub-rule (2) of rule 9;

(g) where the plaintiff fails to comply sub-rule (3) of rule 9."

(iii) for rule 14, the following rule shall be substituted, namely:—

"14. (1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) Where a document or a copy thereof is not filed with the plaint under this rule, it shall not be allowed to be received in evidence on behalf of the plaintiff at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

(iv) rule 15 shall be omitted;

(v) in rule 18, in sub-rule (1), the words "without the leave of the court" shall be omitted.

Production of document on which plaintiff sues or relies.

Amendment of Order VIII.

Written statement.

18. In the First Schedule, in Order VIII,—

(i) for rule 1, the following rule shall be substituted, namely:—

"1. The defendant shall at or before the first hearing or within such time as the court may permit, which shall not be beyond thirty days from the date of service of summons on the defendant, present a written statement of his defence."

(ii) after rule 1 so inserted, the following rule shall be inserted, namely:—

"1A. (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) Where a document or a copy thereof is not filed with the written statement under this rule, it shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit.

(4) Nothing in this rule shall apply to documents—

(a) produced for the cross-examination of the plaintiff's witnesses,

or

(b) handed over to a witness merely to refresh his memory."

(iii) rules 8A, 9 and 10 shall be omitted.

Duty of defendant to produce documents upon which relief is claimed or relied upon by him.

## 19. In the First Schedule, in Order IX,—

(i) for rule 2, the following rule shall be substituted, namely:—

"2. Where on the day so fixed it is found that the summons has not been sent within stipulated period of two days, to the defendant by the plaintiff or his agent or in consequence of their failure to pay the court-fee or any charges, if any chargeable for such service, the court shall make an order that the suit be dismissed:

Provided that no such order shall be made if, notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer.";

(ii) in rule 5, for the words "one month", the words "seven days" shall be substituted.

Amendment of Order IX.

Dismissal of suit where summons not served by the plaintiff or his agent or in consequences of failure to pay cost.

## 20. In the First Schedule, in Order X,—

(i) after rule 1, the following rules shall be inserted, namely:—

"1A. After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1B. Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

1C. Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.";

(ii) in rule 4, in sub-rule (1), for the words "may postpone the hearing of the suit to a future day", the words "may postpone the hearing of the suit to a day not later than seven days from the date of first hearing" shall be substituted.

Amendment of Order X.

Direction of the court to opt for any one mode of alternative dispute resolution.

Appearance before the conciliatory forum or authority.

Appearance before the court consequent to the failure of efforts of conciliation.

## 21. In the First Schedule, in Order XI,—

(i) in rule 2, after the words "submitted to the court", the words "and that court shall decide within seven days from the day of filing of the said application," shall be inserted;

(ii) in rule 15, for the words "at any time", the words "at or before the settlement of issues" shall be substituted.

Amendment of Order XI.

## 22. In the First Schedule, in Order XII,—

(i) in rule 2, for the word "fifteen", the word "seven" shall be substituted;

(ii) in rule 4, second proviso shall be omitted.

Amendment of Order XII.

## 23. In the First Schedule, in Order XIII, for rules 1 and 2, the following rule shall be substituted, namely:—

"1. (1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The court shall receive the documents so produced:

Amendment of Order XIII.

Original documents to be produced at or before the settlement of issues.

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents—

(a) produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory."

Amendment of  
Order XIV.

24. In the First Schedule, in Order XIV,—

(i) in rule 4, for the words "may adjourn the framing of the issues to a future day", the words "may adjourn the framing of issues to a day not later than seven days" shall be substituted;

(ii) rule 5 shall be omitted.

Amendment of  
Order XVI.

25. In the First Schedule, in Order XVI,—

(i) in rule 1, in sub-rule (4), for the words "court in this behalf", occurring at the end, the words, brackets and figure "court in this behalf within five days of presenting the list of witnesses under sub-rule (1)" shall be substituted;

(ii) in rule 2, in sub-rule (1), after the words "within a period to be fixed", the words, brackets and figures "which shall not be later than seven days from the date of making application under sub-rule (4) of rule 1" shall be inserted.

Amendment of  
Order XVII.

26. In the First Schedule, in Order XVII, in rule 1,—

(i) for sub-rule (1), the following shall be substituted, namely:—

"(1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit."

(ii) in sub-rule (2), for the words "may make such order as it thinks fit with respect to the costs occasioned by the adjournment", the words "shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit" shall be substituted.

Amendment of  
Order XVIII.

27. In the First Schedule, in Order XVIII,—

(i) sub-rule (4) of rule 2 shall be omitted;

(ii) for rule 4, the following rule shall be substituted, namely:—

"4. (1) In every case, the evidence of a witness of his examination-in-chief shall be given by affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the court shall be taken orally by a commissioner to be appointed by the court from amongst the panel of commissioners prepared for this purpose on the same day:

Provided that, in the interest of justice and for reasons to be recorded in writing, the court may direct that the evidence of any witness shall be recorded by the court in the presence and under the personal direction and superintendence of the judge.

Recording of  
evidence by  
commissioner.



(3) The commissioner shall be paid such sum for recording of evidence as may be prescribed by the High Court.

(4) The amount payable to the commissioner under sub-rule (3) shall be paid by the Court or by the parties summoning the witness as may be prescribed by the High Court.

(5) The District Judge shall prepare a panel of commissioners to record the evidence under this rule.

(6) The commissioner shall record evidence either in writing or mechanically in his presence and shall make a memorandum which shall be signed by him and the witnesses and submit the same to the court appointing such commissioner.

(7) Where any question put to a witness is objected by a party or his pleader and the commissioner allows the same to be put, the commissioner shall take down the question together with his decision."

(iii) rule 17A shall be omitted;

(iv) after rule 18, the following rule shall be inserted, namely:—

"19. Notwithstanding anything contained in these rules, the court may, instead of examining witnesses in open court, direct their statements to be recorded on commission under rule 4A of Order XXVI."

Power to get statements recorded on commission.

28. In the First Schedule, in Order XX,—

Amendment of Order XX.

(i) in rule 1, in sub-rule (2), the words "but a copy of the whole judgment shall be made available for the perusal of the parties or the pleaders immediately after the judgment is pronounced" shall be omitted;

(ii) for rules 6A and 6B, the following rules shall be substituted, namely:—

"6A. (1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.

Preparation of decree.

(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the court shall for the purposes of rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

6B. Where the judgment is pronounced, copies of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment of such charges as may be specified in the rule made by the High Court."

Copies of judgments when to be made available.

29. In the First Schedule, in Order XXVI, after rule 4, the following rule shall be inserted, namely:—

Amendment of Order XXVI.

"4A. Notwithstanding anything contained in these rules, any court may, in the interest of justice or for the expeditious disposal of the case or for any other reason, issue commission in any suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.

Commission for examination of any person resident within the local limits of the jurisdiction of the court.

30. In the First Schedule, in Order XXXIX, rule 1 shall be renumbered as sub-rule (1) of that rule and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:—

Amendment of Order XXXIX.

"(2) The court shall, while granting a temporary injunction to restrain such

act or to make such other order for the purposes of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property under disposition in the suit under sub-rule (1), direct the plaintiff to give security or otherwise as the court thinks fit."

Amendment of  
Order XLI.

31. In the First Schedule, in Order XLI,—

(i) in sub-rule (1) of rule 1, for the words and brackets "decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded", the word "judgment" shall be substituted;

(ii) for rule 9, the following rule shall be substituted, namely:—

Registry of  
memorandum  
of appeal.

"9. (1) The Court from whose decree an appeal lies shall entertain the memorandum of appeal and shall endorse thereon the date of presentation and shall register the appeal in a book of appeal kept for that purpose.

(2) Such book shall be called the register of appeal.";

(iii) in rule 11, for sub-rule (1), the following sub-rule shall be substituted, namely:—

"(1) The Appellate Court after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal.";

(iv) in rule 12, for sub-rule (2), the following sub-rule shall be substituted, namely:—

"(2) Such day shall be fixed with reference to the current business of the court.";

(v) rules 13, 15 and 18 shall be omitted;

(vi) in rule 19, the words and figures "or rule 18" shall be omitted;

(vii) in rule 22, sub-rule (3) shall be omitted.

#### CHAPTER IV

##### REPEAL AND SAVINGS

Repeal and  
savings.

32. (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except in so far as such amendment or provisions is consistent with the provisions of the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897,—

10 of 1897.

(a) the provisions of section 26 of the principal Act and of Order IV of the First Schedule, as amended by sections 2 and 14 of this Act, shall not apply to or affect any suit pending immediately before the commencement of sections 2 and 14; and every such suit shall be tried as if sections 2 and 14 had not come into force;

(b) the provisions of section 27 of the principal Act, as amended by section 3 of this Act, shall not apply to or affect any suit pending immediately before the commencement of section 3 and every such suit shall be tried as if section 3 had not come into force;

(c) the provisions of section 58 of the principal Act, as amended by section 5 of this Act, shall not apply to or affect any person detained in the civil prison in execution of a decree before the commencement of section 5;

(d) the provisions of section 60 of the principal Act, as amended by section 6 of this Act, shall not exempt salary from attachment to the extent mentioned in clause (i) of the first proviso to sub-section (1) of section 60 before the commencement of section 6;

(e) section 89 and rules 1A, 1B and 1C of Order X of the First Schedule, as inserted in the principal Act by sections 7 and 20 of this Act, shall not affect any suit in which issues have been settled before the commencement of section 7; and every such suit shall be dealt with as if sections 7 and 20 had not come into force;

(f) the provisions of section 96 of the principal Act, as amended by section 9 of this Act, shall not apply to or affect any appeal from original decree which had been admitted before the commencement of section 9; and every admitted appeal shall be dealt with as if section 9 had not come into force;

(g) the provisions of section 100A of the principal Act, as substituted by section 10 of this Act, shall not apply to or affect any appeal against the decision of a Single Judge of a High Court under article 226 or article 227 of the Constitution which had been admitted before the commencement of section 10; and every such admitted appeal shall be disposed of as if section 10 had not come into force;

(h) the provisions of section 102 of the principal Act, as substituted by section 11 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of section 11; and every such appeal shall be disposed of as if section 11 had not come into force;

(i) the provisions of section 115 of the principal Act, as amended by section 12 of this Act, shall not apply to or affect any proceeding for revision which had been finally disposed of;

(j) the provisions of rules 1, 2, 6, 7, 9, 9A, 19A, 21, 24 and 25 of Order V of the First Schedule as amended or, as the case may be, inserted or omitted by section 15 of this Act shall not apply to any summons issued immediately before the commencement of section 15;

(k) the provisions of rules 9, 11, 14, 15 and 18 of Order VII of the First Schedule, as amended or, as the case may be, substituted or amended by section 17 of this Act, shall not apply to in respect of any proceedings pending before the commencement of section 17;

(l) the provisions of rules 1 and 1A of Order VIII of the First Schedule, as substituted or inserted by section 18 of this Act, shall not apply to a written statement filed and presented before the court immediately before the commencement of section 18;

(m) the provisions of rules 2 and 5 of Order IX of the First Schedule, as amended by section 19 of this Act, shall not apply in respect of summons issued before the commencement of section 19;

(n) the provisions of rules 2 and 15 of Order XI of the First Schedule, as amended by section 21 of this Act, shall not apply to or affect any order passed by the court or any application submitted for inspection to the court before the commencement of section 21 of this Act;

(o) the provisions of rules 2 and 4 of Order XII of the First Schedule, as amended and omitted, as the case may be, by section 22 of this Act, shall not affect any notice given by the party or any order made by the court before the commencement of section 22 of this Act;

(p) the provisions of rules 1 and 2 of Order XIII of the First Schedule, as substituted by section 23 of this Act, shall not affect the documents produced by the parties or ordered by the court to be produced before the commencement of section 23 of this Act;

(q) the provisions of rules 4 and 5 of Order XIV of the First Schedule, as amended and omitted by section 24 of this Act, shall not affect any order made by the court adjourning the framing of the issues and amending and striking out issues before the commencement of section 24 of this Act;

(r) the provisions of rules 1 and 2 of Order XVI of the First Schedule, as amended by section 25 of this Act, shall not affect any application made for summoning of witnesses and time granted to a party to deposit amount for summoning witnesses made by the court before the commencement of section 25;

(s) the provisions of rule 1 of Order XVII of the First Schedule, as amended by section 25 of this Act, shall not affect any adjournment granted by the court and any cost occasioned by the adjournment granted by the court before the commencement of section 25 and the number of adjournments granted earlier shall not be counted for such purpose;

(t) the provisions of rules 1, 6A and 6B of Order XX of the First Schedule, as amended and substituted by section 28 of this Act, shall not affect any application for obtaining copy of decree for filing of appeal made by a party and any appeal filed before the commencement of section 28 of this Act; and every application made and every appeal filed before the commencement of section 28 shall be dealt with as if section 28 had not come into force;

(u) in sub-rule (2) of rule 1 of Order XXXIX of the First Schedule, as inserted by section 30 of this Act, shall not affect any temporary injunction granted before the commencement of section 30 of this Act;

(v) the provisions of rules 1, 9, 11, 12, 13, 15, 18, 19 and 22 of Order XLI of the First Schedule; as amended, substituted and omitted, as the case may be, by clause 32 of the Bill shall not affect any appeal filed before the commencement of section 32; and every appeal pending before the commencement of section 32 shall be disposed of as if section 32 of this Bill had not come into force.

## CHAPTER V

### AMENDMENT OF THE LIMITATION ACT, 1963

Amendment of  
section 12.

33. In the Limitation Act, 1963, in section 12, in sub-section (3), the words "on which the decree or order is founded" at the end shall be omitted. 36 of 1963.

## CHAPTER VI

### AMENDMENT OF THE COURT FEES' ACT, 1870

Insertion of  
new section 16.

34. In the Court Fees' Act, 1870 (hereafter in this Chapter referred to as the Court Fees' Act), after section 15, the following section shall be inserted, namely:— 7 of 1870.

Refund of Fee.

"16. Where the court refers the parties to the suit to any one of the mode of settlement of dispute referred to in section 89 of the Code of Civil Procedure, 1908 5 of 1908.



the plaintiff shall be entitled to a certificate from the court authorising him to receive back from the collector, the full amount of the fee paid in respect of such plaint."

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



सत्यमेव जयते

# The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar. 8th June, 2000.

No. : RP/32/2000/Act-47/99/E.- The following Act of Parliament is re-published for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,  
(Legislative Department)

New Delhi, the 30th December, 1999 / Pausa 9, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 30th December, 1999 and is hereby published for general information :-

THE TRADE MARKS ACT, 1999.

(Act No. 47 of 1999)

(30th December, 1999)

#### AN ACT

*to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks.*

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

#### CHAPTER I

##### PRELIMINARY

1. (1) This Act may be called the Trade Marks Act, 1999.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. (1) In this Act, unless the context otherwise requires,—

(a) "Appellate Board" means the Appellate Board established under section 83;

Short title,  
extent and  
commencement.

Definitions and  
interpretation.

(b) "assignment" means an assignment in writing by act of the parties concerned;

(c) "associated trade marks" means trade marks deemed to be, or required to be, registered as associated trade marks under this Act;

(d) "Bench" means a Bench of the Appellate Board;

(e) "certification trade mark" means a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registrable as such under Chapter IX in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person;

(f) "Chairman" means the Chairman of the Appellate Board;

(g) "collective mark" means a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Indian Partnership Act, 1932) which is the proprietor of the mark from those of others;

9 of 1932.

(h) "deceptively similar".—A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion;

(i) "false trade description" means—

(I) a trade description which is untrue or misleading in a material respect as regards the goods or services to which it is applied; or

(II) any alteration of a trade description as regards the goods or services to which it is applied, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue or misleading in a material respect; or

(III) any trade description which denotes or implies that there are contained, as regards the goods to which it is applied, more yards or metres than there are contained therein standard yards or standard metres; or

(IV) any marks or arrangement or combination thereof when applied—

(a) to goods in such a manner as to be likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose merchandise or manufacture they really are;

(b) in relation to services in such a manner as to be likely to lead persons to believe that the services are provided or rendered by some person other than the person whose services they really are; or

(V) any false name or initials of a person applied to goods or services in such manner as if such name or initials were a trade description in any case where the name or initials—

(a) is or are not a trade mark or part of a trade mark; and

(b) is or are identical with or deceptively similar to the name or initials of a person carrying on business in connection with goods or services of the same description or both and who has not authorised the use of such name or initials; and

(c) is or are either the name or initials of a fictitious person or some person not *bona fide* carrying on business in connection with such goods or services;

and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act;

(j) "goods" means anything which is the subject of trade or manufacture;

(k) "Judicial Member" means a Member of the Appellate Board appointed as such under this Act, and includes the Chairman and the Vice-Chairman;

(l) "limitations" (with its grammatical variations) means any limitation of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode or area of use within India or outside India;

(m) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;

(n) "Member" means a Judicial Member or a Technical Member of the Appellate Board and includes the Chairman and the Vice-Chairman;

(o) "name" includes any abbreviation of a name;

(p) "notify" means to notify in the Trade Mark Journal published by the Registrar;

(q) "package" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;

(r) "permitted use", in relation to a registered trade mark, means the use of trade mark—

(i) by a registered user of the trade mark in relation to goods or services—

(a) with which he is connected in the course of trade; and

(b) in respect of which the trade mark remains registered for the time being; and

(c) for which he is registered as registered user; and

(d) which complies with any conditions or limitations to which the registration of registered user is subject; or

(ii) by a person other than the registered proprietor and registered user in relation to goods or services—

(a) with which he is connected in the course of trade; and

(b) in respect of which the trade mark remains registered for the time being; and

(c) by consent of such registered proprietor in a written agreement; and

(d) which complies with any conditions or limitations to which such user is subject and to which the registration of the trade mark is subject;

(s) "prescribed" means prescribed by rules made under this Act;

(t) "register" means the Register of Trade Marks referred to in sub-section (1) of section 6;

(u) "registered" (with its grammatical variations) means registered under this Act;



(v) "registered proprietor", in relation to a trade mark, means the person for the time being entered in the register as proprietor of the trade mark;

(w) "registered trade mark" means a trade mark which is actually on the register and remaining in force;

(x) "registered user" means a person who is for the time being registered as such under section 49;

(y) "Registrar" means the Registrar of Trade Marks referred to in section 3;

(z) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

(za) "trade description" means any description, statement or other indication, direct or indirect,—

(i) as to the number, quantity, measure, gauge or weight of any goods;

or

(ii) as to the standard of quality of any goods or services according to a classification commonly used or recognised in the trade; or

(iii) as to fitness for the purpose, strength, performance or behaviour of any goods, being "drug" as defined in the Drugs and Cosmetics Act, 1940, or "food" as defined in the Prevention of Food Adulteration Act, 1954; or

23 of 1940.  
37 of 1954.

(iv) as to the place or country in which or the time at which any goods or services were made, produced or provided, as the case may be; or

(v) as to the name and address or other indication of the identity of the manufacturer or of the person providing the services or of the person for whom the goods are manufactured or services are provided; or

(vi) as to the mode of manufacture or producing any goods or providing services; or

(vii) as to the material of which any goods are composed; or

(viii) as to any goods being the subject of an existing patent, privilege or copyright;

and includes—

(a) any description as to the use of any mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters;

(b) the description as to any imported goods contained in any bill of entry or shipping bill;

(c) any other description which is likely to be misunderstood or mistaken for all or any of the said matters;

(zb) "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and—

(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so, to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;

(zc) "transmission" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfer, not being assignment;

(zd) "Technical Member" means a Member who is not a Judicial Member;

(ze) "tribunal" means the Registrar or, as the case may be, the Appellate Board, before which the proceeding concerned is pending;

(zf) "Vice-Chairman" means a Vice-Chairman of the Appellate Board;

(zg) "well-known trade mark", in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

(2) In this Act, unless the context otherwise requires, any reference—

(a) to "trade mark" shall include reference to "collective mark" or "certification trade mark";

(b) to the use of a mark shall be construed as a reference to the use of printed or other visual representation of the mark;

(c) to the use of a mark,—

(i) in relation to goods, shall be construed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods;

(ii) in relation to services, shall be construed as a reference to the use of the mark as or as part of any statement about the availability, provision or performance of such services;

(d) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (2) of section 3;

(e) to the Trade Marks Registry shall be construed as including a reference to any office of the Trade Marks Registry.

(3) For the purposes of this Act, goods and services are associated with each other if it is likely that those goods might be sold or otherwise traded in and those services might be provided by the same business and so with descriptions of goods and descriptions of services.

(4) For the purposes of this Act, "existing registered trade mark" means a trade mark registered under the Trade and Merchandise Marks Act, 1958 immediately before the commencement of this Act.

## CHAPTER II

### THE REGISTER AND CONDITIONS FOR REGISTRATION

3. (1) The Central Government may, by notification in the Official Gazette, appoint a person to be known as the Controller-General of Patents, Designs and Trade Marks, who shall be the Registrar of Trade Marks for the purposes of this Act.

Appointment of Registrar and other officers.

(2) The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act as he may from time to time authorise them to discharge.

Power of Registrar to withdraw or transfer cases, etc.

4. Without prejudice to the generality of the provisions of sub-section (2) of section 3, the Registrar may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under the said sub-section (2) and deal with such matter himself either *de novo* or from the stage it was so withdrawn or transfer the same to another officer so appointed who may, subject to special directions in the order of transfer, proceed with the matter either *de novo* or from the stage it was so transferred.

Trade Marks Registry and offices thereof.

5. (1) For the purposes of this Act, there shall be a trade marks registry and the Trade Marks Registry established under the Trade and Merchandise Marks Act, 1958 shall be the Trade Marks Registry under this Act.

43 of 1958.

(2) The head office of the Trade Marks Registry shall be at such place as the Central Government may specify, and for the purpose of facilitating the registration of trade marks, there may be established at such places as the Central Government may think fit branch offices of the Trade Marks Registry.

(3) The Central Government may, by notification in the Official Gazette, define the territorial limits within which an office of the Trade Marks Registry may exercise its functions.

(4) There shall be a seal of the Trade Marks Registry.

The Register of Trade Marks.

6. (1) For the purposes of this Act, a record called the Register of Trade Marks shall be kept at the head office of the Trade Marks Registry, wherein shall be entered all registered trade marks with the names, addresses and description of the proprietors, notifications of assignment and transmissions, the names, addresses and descriptions of registered users, conditions, limitations and such other matter relating to registered trade marks as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Registrar to keep the records wholly or partly in computer floppies diskettes or in any other electronic form subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly on computer under sub-section (2) any reference in this Act to entry in the register shall be construed as the reference to any entry as maintained on computer or in any other electronic form.

(4) No notice of any trust, express or implied or constructive, shall be entered in the register and no such notice shall be receivable by the Registrar.

(5) The register shall be kept under the control and management of the Registrar.

(6) There shall be kept at each branch office of the Trade Marks Registry a copy of the register and such of the other documents mentioned in section 148 as the Central Government may, by notification in the Official Gazette, direct.

(7) The Register of Trade Marks, both Part A and Part B, existing at the commencement of this Act, shall be incorporated in and form part of the register under this Act.

Classification of goods and services.

7. (1) The Registrar shall classify goods and services, as far as may be, in accordance with the International classification of goods and services for the purposes of registration of trade marks.

(2) Any question arising as to the class within which any goods or services falls shall be determined by the Registrar whose decision shall be final.

8. (1) The Registrar may publish in the prescribed manner an alphabetical index of classification of goods and services referred to in section 7.

Publication of  
alphabetical  
index.

(2) Where any goods or services are not specified in the alphabetical index of goods and services published under sub-section (1), the classification of goods or services shall be determined by the Registrar in accordance with sub-section (2) of section 7.

9. (1) The trade marks—

Absolute  
grounds for  
refusal of  
registration.

(a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;

(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;

(c) which consist exclusively of marks or indications which have become customary in the current language or in the *bona fide* and established practices of the trade,

shall not be registered:

Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

(2) A mark shall not be registered as a trade mark if—

(a) it is of such nature as to deceive the public or cause confusion;

(b) it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;

(c) it comprises or contains scandalous or obscene matter;

(d) its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.

12 of 1950.

(3) A mark shall not be registered as a trade mark if it consists exclusively of—

(a) the shape of goods which results from the nature of the goods themselves; or

(b) the shape of goods which is necessary to obtain a technical result; or

(c) the shape which gives substantial value to the goods.

*Explanation.*—For the purposes of this section, the nature of goods or services in relation to which the trade mark is used or proposed to be used shall not be a ground for refusal of registration.

10. (1) A trade mark may be limited wholly or in part to any combination of colours and any such limitation shall be taken into consideration by the tribunal having to decide on the distinctive character of the trade mark.

Limitation as  
to colour.

(2) So far as a trade mark is registered without limitation of colour, it shall be deemed to be registered for all colours.

11. (1) Save as provided in section 12, a trade mark shall not be registered if, because of—

Relative  
grounds for  
refusal of  
registration.

(a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or

(b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

(2) A trade mark which—

(a) is identical with or similar to an earlier trade mark; and

(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor,



shall not be registered if or to the extent the earlier trade mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.

(3) A trade mark shall not be registered if, or to the extent that, its use in India is liable to be prevented—

(a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade; or

(b) by virtue of law of copyright.

(4) Nothing in this section shall prevent the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration, and in such case the Registrar may register the mark under special circumstances under section 12.

*Explanation.*—For the purposes of this section, earlier trade mark means—

(a) a registered trade mark or convention application referred to in section 154 which has a date of application earlier than that of the trade mark in question, taking account, where appropriate, of the priorities claimed in respect of the trade marks;

(b) a trade mark which, on the date of the application for registration of the trade mark in question, or where appropriate, of the priority claimed in respect of the application, was entitled to protection as a well-known trade mark.

(5) A trade mark shall not be refused registration on the grounds specified in sub-sections (2) and (3), unless objection on any one or more of those grounds is raised in opposition proceedings by the proprietor of the earlier trade mark.

(6) The Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including—

(i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;

(ii) the duration, extent and geographical area of any use of that trade mark;

(iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;

(iv) the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent they reflect the use or recognition of the trade mark;

(v) the record of successful enforcement of the rights in that trade mark, in particular, the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.

(7) The Registrar shall, while determining as to whether a trade mark is known or recognised in a relevant section of the public for the purposes of sub-section (6), take into account—

(i) the number of actual or potential consumers of the goods or services;

(ii) the number of persons involved in the channels of distribution of the goods or services;

(iii) the business circles dealing with the goods or services,

to which that trade mark applies.

(8) Where a trade mark has been determined to be well-known in at least one relevant section of the public in India by any court or Registrar, the Registrar shall consider that trade mark as a well-known trade mark for registration under this Act.

(9) The Registrar shall not require as a condition, for determining whether a trade mark is a well-known trade mark, any of the following, namely:—

- (i) that the trade mark has been used in India;
- (ii) that the trade mark has been registered;
- (iii) that the application for registration of the trade mark has been filed in India;
- (iv) that the trade mark—
  - (a) is well-known in; or
  - (b) has been registered in; or
  - (c) in respect of which an application for registration has been filed in, any jurisdiction other than India; or
- (v) that the trade mark is well-known to the public at large in India.

(10) While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall—

- (i) protect a well-known trade mark against the identical or similar trade marks;
- (ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.

(11) Where a trade mark has been registered in good faith disclosing the material informations to the Registrar or where right to a trade mark has been acquired through use in good faith before the commencement of this Act, then, nothing in this Act shall prejudice the validity of the registration of that trade mark or right to use that trade mark on the ground that such trade mark is identical with or similar to a well-known trade mark.

12. In the case of honest concurrent use or of other special circumstances which in the opinion of the Registrar, make it proper so to do, he may permit the registration by more than one proprietor of the trade marks which are identical or similar (whether any such trade mark is already registered or not) in respect of the same or similar goods or services, subject to such conditions and limitations, if any, as the Registrar may think fit to impose.

Registration in the case of honest concurrent use, etc.

13. No word—

(a) which is the commonly used and accepted name of any single chemical element or any single chemical compound (as distinguished from a mixture) in respect of a chemical substance or preparation, or

(b) which is declared by the World Health Organisation and notified in the prescribed manner by the Registrar from time to time, as an international non-proprietary name or which is deceptively similar to such name,

Prohibition of registration of names of chemical elements or international non-proprietary names.

shall be registered as a trade mark and any such registration shall be deemed for the purpose of section 57 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require.

14. Where an application is made for the registration of a trade mark which falsely suggests a connection with any living person, or a person whose death took place within twenty years prior to the date of application for registration of the trade mark, the Registrar may, before he proceeds with the application, require the applicant to furnish him with the consent in writing of such living person or, as the case may be, of the legal

Use of names and representations of living persons or persons recently dead.

representative of the deceased person to the connection appearing on the trade mark, and may refuse to proceed with the application unless the applicant furnishes the registrar with such consent.

Registration of parts of trade marks and of trade marks as a series.

15. (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks.

(2) Each such separate trade mark shall satisfy all the conditions applying to and have all the incidents of, an independent trade mark.

(3) Where a person claiming to be the proprietor of several trade marks in respect of the same or similar goods or services or description of goods or description of services, which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) statement of the goods or services in relation to which they are respectively used or proposed to be used; or

(b) statement of number, price, quality or names of places; or

(c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) colour,

seeks to register those trade marks, they may be registered as a series in one registration.

Registration of trade marks as associated trade marks.

16. (1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods or services is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods or same services or description of services or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may, at any time, require that the trade marks shall be entered on the register as associated trade marks.

(2) Where there is an identity or near resemblance of marks that are registered, or are the subject of applications for registration in the name of the same proprietor, in respect of goods and in respect of services which are associated with those goods or goods of that description and with those services or services of that description, sub-section (1) shall apply as it applies as where there is an identity or near resemblance of marks that are registered, or are the subject of applications for registration, in the name of the same proprietor in respect of the same goods or description of goods or same services or description of services.

(3) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of section 15, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(4) All trade marks registered in accordance with the provisions of sub-section (3) of section 15 as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(5) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by any other person in relation to any of the goods or services or both in respect of which it is registered, and may amend the register accordingly.

Effect of registration of parts of a mark.

17. (1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.

(2) Notwithstanding anything contained in sub-section (1), when a trade mark—

(a) contains any part—

(i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or

(ii) which is not separately registered by the proprietor as a trade mark;

or

(b) contains any matter which is common to the trade or is otherwise of a non-distinctive character,

the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.

### CHAPTER III

#### PROCEDURE FOR AND DURATION OF REGISTRATION

18. (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him, who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his trade mark.

Application for registration.

(2) A single application may be made for registration of a trade mark for different classes of goods and services and fee payable therefor shall be in respect of each such class of goods or services.

(3) Every application under sub-section (1) shall be filed in the office of the Trade Marks Registry within whose territorial limits the principal place of business in India of the applicant or in the case of joint applicants the principal place of business in India of the applicant whose name is first mentioned in the application as having a place of business in India, is situate:

Provided that where the applicant or any of the joint applicants does not carry on business in India, the application shall be filed in the office of the Trade Marks Registry within whose territorial limits the place mentioned in the address for service in India as disclosed in the application, is situate.

(4) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

(5) In the case of a refusal or conditional acceptance of an application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at his decision.

19. Where, after the acceptance of an application for registration of a trade mark but before its registration, the Registrar is satisfied—

Withdrawal of acceptance.

(a) that the application has been accepted in error; or

(b) that in the circumstances of the case the trade mark should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted,

the Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted.

20. (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions

Advertisement of application:



or limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner:

Provided that the Registrar may cause the application to be advertised before acceptance if it relates to a trade mark to which sub-section (1) of section 9 and sub-sections (1) and (2) of section 11 apply, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do.

(2) Where—

(a) an application has been advertised before acceptance under sub-section (1); or

(b) after advertisement of an application,—

(i) an error in the application has been corrected; or

(ii) the application has been permitted to be amended under section 22;

the Registrar may in his discretion cause the application to be advertised again or in any case falling under clause (b) may, instead of causing the application to be advertised again, notify in the prescribed manner the correction or amendment made in the application.

Opposition to registration.

21. (1) Any person may, within three months from the date of the advertisement or re-advertisement of an application for registration or within such further period, not exceeding one month in the aggregate, as the Registrar, on application made to him in the prescribed manner and on payment of the prescribed fee, allows, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration.

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

(3) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.

(5) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

(6) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceedings before him, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.

(7) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just.

Correction and amendment.

22. The Registrar may, on such terms as he thinks just, at any time, whether before or after acceptance of an application for registration under section 18, permit the correction of any error in or in connection with the application or permit an amendment of the application:

Provided that if an amendment is made to a single application referred to in sub-section (2) of section 18 involving division of such application into two or more applications, the date of making of the initial application shall be deemed to be the date of making of the divided applications so divided.

23. (1) Subject to the provisions of section 19, when an application for registration of a trade mark has been accepted and either—

Registration.

(a) the application has not been opposed and the time for notice of opposition has expired; or

(b) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall, unless the Central Government otherwise directs, register the said trade mark and the trade mark when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of section 154, be deemed to be the date of registration.

(2) On the registration of a trade mark, the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof, sealed with the seal of the Trade Marks Registry.

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(4) The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

24. (1) Save as provided in sub-section (2), nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

Jointly owned trade marks.

(2) Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

(a) on behalf of both or all of them; or

(b) in relation to an article or service with which both or all of them are connected in the course of trade,

those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

25. (1) The registration of a trade mark, after the commencement of this Act, shall be for a period of ten years, but may be renewed from time to time in accordance with the provisions of this section.

Duration, renewal, removal and restoration of registration.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period and subject to payment of the prescribed fee, renew the registration of the trade mark for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as the expiration of the last registration).

(3) At the prescribed time before the expiration of the last registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of the time

prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register:

Provided that the Registrar shall not remove the trade mark from the register if an application is made in the prescribed form and the prescribed fee and surcharge is paid within six months from the expiration of the last registration of the trade mark and shall renew the registration of the trade mark for a period of ten years under sub-section (2).

(4) Where a trade mark has been removed from the register for non-payment of the prescribed fee, the Registrar shall, after six months and within one year from the expiration of the last registration of the trade mark, on receipt of an application in the prescribed form and on payment of the prescribed fee, if satisfied that it is just so to do, restore the trade mark to the register and renew the registration of the trade mark either generally or subject to such conditions or limitations as he thinks fit to impose, for a period of ten years from the expiration of the last registration.

Effect of  
removal from  
register for  
failure to pay  
fee for renewal.

26. Where a trade mark has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another trade mark during one year, next after the date of the removal, be deemed to be a trade mark already on the register, unless the tribunal is satisfied either—

(a) that there has been no *bona fide* trade use of the trade mark which has been removed during the two years immediately preceding its removal; or

(b) that no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

#### CHAPTER IV.

##### EFFECT OF REGISTRATION

No action for  
infringement of  
unregistered  
trade mark.

27. (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof.

Rights  
conferred by  
registration.

28. (1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

(2) The exclusive right to the use of a trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

(3) Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor.

Infringement of  
registered trade  
marks.

29. (1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark,

is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which—

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.

(6) For the purposes of this section, a person uses a registered mark, if, in particular, he—

(a) affixes it to goods or the packaging thereof;

(b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;

(c) imports or exports goods under the mark; or

(d) uses the registered trade mark on business papers or in advertising.

(7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labelling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.

(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising—

(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or

(b) is detrimental to its distinctive character; or

(c) is against the reputation of the trade mark.



(9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly.

Limits on effect  
of registered  
trade mark.

30. (1) Nothing in section 29 shall be construed as preventing the use of a registered trade mark by any person for the purposes of identifying goods or services as those of the proprietor provided the use—

(a) is in accordance with honest practices in industrial or commercial matters, and

(b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.

(2) A registered trade mark is not infringed where—

(a) the use in relation to goods or services indicates the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services or other characteristics of goods or services;

(b) a trade mark is registered subject to any conditions or limitations, the use of the trade mark in any manner in relation to goods to be sold or otherwise traded in, in any place, or in relation to goods to be exported to any market or in relation to services for use or available or acceptance in any place or country outside India or in any other circumstances, to which, having regard to those conditions or limitations, the registration does not extend;

(c) the use by a person of a trade mark—

(i) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk or which they form part, the registered proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or

(ii) in relation to services to which the proprietor of such mark or of a registered user conforming to the permitted use has applied the mark, where the purpose and effect of the use of the mark is to indicate, in accordance with the fact, that those services have been performed by the proprietor or a registered user of the mark;

(d) the use of a trade mark by a person in relation to goods adapted to form part of, or to be accessory to, other goods or services in relation to which the trade mark has been used without infringement of the right given by registration under this Act or might for the time being be so used, if the use of the trade mark is reasonably necessary in order to indicate that the goods or services are so adapted, and neither the purpose nor the effect of the use of the trade mark is to indicate, otherwise than in accordance with the fact, a connection in the course of trade between any person and the goods or services, as the case may be;

(e) the use of a registered trade mark, being one of two or more trade marks registered under this Act which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration under this Act.

(3) Where the goods bearing a registered trade mark are lawfully acquired by a person, the sale of the goods in the market or otherwise dealing in those goods by that person or by a person claiming under or through him is not infringement of a trade by reason only of—

(a) the registered trade mark having been assigned by the registered proprietor to some other person, after the acquisition of those goods; or

(b) the goods having been put on the market under the registered trade mark by the proprietor or with his consent.

(4) Sub-section (3) shall not apply where there exists legitimate reasons for the proprietor to oppose further dealings in the goods in particular, where the condition of the goods, has been changed or impaired after they have been put on the market.

31. (1) In all legal proceedings relating to a trade mark registered under this Act (including applications under section 57), the original registration of the trade mark and of all subsequent assignments and transmissions of the trade mark shall be *prima facie* evidence of the validity thereof;

Registration to be *prima facie* evidence of validity.

(2) In all legal proceedings as aforesaid a registered trade mark shall not be held to be invalid on the ground that it was not a registrable trade mark under section 9 except upon evidence of distinctiveness and that such evidence was not submitted to the Registrar before registration, if it is proved that the trade mark had been so used by the registered proprietor or his predecessor in title as to have become distinctive at the date of registration.

32. Where a trade mark is registered in breach of sub-section (1) of section 9, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration and before commencement of any legal proceedings challenging the validity of such registration, acquired a distinctive character in relation to the goods or services for which it is registered.

Protection of registration on ground of distinctiveness in certain cases.

33. (1) Where the proprietor of an earlier trade mark has acquiesced for a continuous period of five years in the use of a registered trade mark, being aware of that use, he shall no longer be entitled on the basis of that earlier trade mark—

Effect of acquiescence.

(a) to apply for a declaration that the registration of the later trade mark is invalid, or

(b) to oppose the use of the later trade mark in relation to the goods or services in relation to which it has been so used,

unless the registration of the later trade mark was not applied in good faith.

(2) Where sub-section (1) applies, the proprietor of the later trade mark is not entitled to oppose the use of the earlier trade mark, or as the case may be, the exploitation of the earlier right, notwithstanding that the earlier trade mark may no longer be invoked against his later trade mark.

34. Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

Saving for vested rights.

(a) to the use of the first-mentioned trade mark in relation to those goods or services be the proprietor or a predecessor in title of his; or

(b) to the date of registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor or a predecessor in title of his;

whichever is the earlier, and the Registrar shall not refuse (on such use being proved) to register the second mentioned trade mark by reason only of the registration of the first-mentioned trade mark.

35. Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with any *bona fide* use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods or services.

Saving for use of name, address or description of goods or services.

Saving for words used as name or description of an article or substance or service.

36. (1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use after the date of the registration of any word or words which the trade mark contains or of which it consists as the name or description of an article or substance or service:

Provided that, if it is proved either—

(a) that there is a well known and established use of the said word as the name or description of the article or substance or service by a person or persons carrying on trade therein, not being use in relation to goods or services connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) in relation to goods or services certified by the proprietor; or

(b) that the article or substance was formerly manufactured under a patent that a period of two years or more after the cesser of the patent has elapsed and that the said word is the only practicable name or description of the article or substance, the provisions of sub-section (2) shall apply.

(2) Where the facts mentioned in clause (a) or clause (b) of the proviso to sub-section (1) are proved with respect to any words, then,—

(a) for the purposes of any proceedings under section 57 if the trade mark consists solely of such words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, or of the services or of any services of the same description, as the case requires, shall be deemed to be an entry wrongly remaining on the register;

(b) for the purposes of any other legal proceedings relating to the trade mark,—

(i) if the trade mark consists solely of such words, all rights of the proprietor under this Act or any other law to the use of the trade mark; or

(ii) if the trade mark contains such words and other matter, all such right of the proprietor to the use of such words,

in relation to the article or substance or to any goods of the same description, or to the service or to any services of the same description, as the case requires, shall be deemed to have ceased on the date on which the use mentioned in clause (a) of the proviso to sub-section (1) first became well known and established or at the expiration of the period of two years mentioned in clause (b) of the said proviso.

## CHAPTER V

### ASSIGNMENT AND TRANSMISSION

Power of registered proprietor to assign and give receipts.

37. The person for the time being entered in the register as proprietor of a trade mark shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment.

Assignability and transmissibility of registered trade marks.

38. Notwithstanding anything in any other law to the contrary, a registered trade mark shall, subject to the provisions of this Chapter, be assignable and transmissible, whether with or without the goodwill of the business concerned and in respect either of all the goods or services in respect of which the trade mark is registered or of some only of those goods or services.

Assignability and transmissibility of unregistered trade marks.

39. An unregistered trade mark may be assigned or transmitted with or without the goodwill of the business concerned.

40. (1) Notwithstanding anything in sections 38 and 39, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to—

Restriction on assignment or transmission where multiple exclusive rights would be created.

- (a) same goods or services;
- (b) same description of goods or services;
- (c) goods or services or description of goods or services which are associated with each other,

of trade marks nearly resembling each other or of identical trade mark, if having regard to the similarity of the goods and services and to the similarity of the trade marks, the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion:

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise traded in, within India otherwise than for export therefrom, or in relation to goods to be exported to the same market outside India or in relation to services for use at any place in India or any place outside India in relation to services available for acceptance in India.

(2) The proprietor of a registered trade mark who proposes to assign it may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods or services and of the trade marks referred to in the case, the proposed assignment would or would not be invalid under sub-section (1), and a certificate so issued shall, subject to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under sub-section (1) of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under section 45 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

41. Notwithstanding anything in sections 38 and 39, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law—

Restriction on assignment or transmission when exclusive rights would be created in different parts of India.

(a) an exclusive right in one of the persons concerned, to the use of the trade mark limited to use in relation to goods to be sold or otherwise traded in, in any place in India, or in relation to services for use, or services available for acceptance in any place in India; and

(b) an exclusive right in another of these persons concerned, to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to—

- (i) the same goods or services; or
- (ii) the same description of goods or services; or

(iii) services which are associated with those goods or goods of that description or goods which are associated with those services or services of that description,

limited to use in relation to goods to be sold or otherwise traded in, or services for use, or available for acceptance, in any other place in India:

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claims that a



registered trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark in exercise of the said rights would not be contrary to the public interest may approve the assignment or transmission, and an assignment or transmission so approved shall not, unless it is shown that the approval was obtained by fraud or misrepresentation, be deemed to be invalid under this section or section 40 if application for the registration under section 45 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

Conditions for assignment otherwise than in connection with the goodwill of a business.

42. Where an assignment of a trade mark, whether registered or unregistered is made otherwise than in connection with the goodwill of the business in which the mark has been or is used, the assignment shall not take effect unless the assignee, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, not exceeding three months in the aggregate, as the Registrar may allow, applies to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct.

*Explanation.*—For the purposes of this section, an assignment of a trade mark of the following description shall not be deemed to be an assignment made otherwise than in connection with the goodwill of the business in which the mark is used, namely:—

(a) an assignment of a trade mark in respect only of some of the goods or services for which the trade mark is registered accompanied by the transfer of the goodwill of the business concerned in those goods or services only; or

(b) an assignment of a trade mark which is used in relation to goods exported from India or in relation to services for use outside India if the assignment is accompanied by the transfer of the goodwill of the export business only.

Assignability and transmissibility of certification trade marks.

43. A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Registrar, for which application shall be made in writing in the prescribed manner.

Assignability and transmissibility of associated trade marks.

44. Associated trade marks shall be assignable and transmissible only as a whole and not separately, but, subject to the provisions of this Act, they shall, for all other purposes, be deemed to have been registered as separate trade marks.

Registration of assignments and transmissions.

45. (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall, on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods or services in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register:

Provided that where the validity of an assignment or transmission is in dispute between the parties, the Registrar may refuse to register the assignment or transmission until the rights of the parties have been determined by a competent court.

(2) Except for the purpose of an application before the Registrar under sub-section (1) or an appeal from an order thereon, or an application under section 57 or an appeal from an order thereon, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1), shall not be admitted in evidence by the Registrar or the Appellate Board or any court in proof of title to the trade mark by assignment or transmission unless the Registrar or the Appellate Board or the court, as the case may be, otherwise directs.

## CHAPTER VI

## USE OF TRADE MARKS AND REGISTERED USERS

46. (1) No application for the registration of a trade mark in respect of any goods or services shall be refused nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark if the Registrar is satisfied that—

Proposed use of trade mark by company to be formed, etc.

1 of 1956.

(a) a company is about to be formed and registered under the Companies Act, 1956 and that the applicant intends to assign the trade mark to that company with a view to the use thereof in relation to those goods or services by the company, or

(b) the proprietor intends it to be used by a person, as a registered user after the registration of the trade mark.

(2) The provisions of section 47 shall have effect, in relation to a trade mark registered under the powers conferred by this sub-section, as if for the reference, in clause (a) of sub-section (1) of that section, to the intention on the part of an applicant for registration that a trade mark should be used by him there were substituted a reference to the intention on his part that it should be used by the company or registered user concerned.

(3) The tribunal may, in a case to which sub-section (1) applies, require the applicant to give security for the costs of any proceedings relating to any opposition or appeal, and in default of such security being duly given, may treat the application as abandoned.

(4) Where in a case to which sub-section (1) applies, a trade mark in respect of any goods or services is registered in the name of an applicant who, relies on intention to assign the trade mark to a company, then, unless within such period as may be prescribed or within such further period not exceeding six months as the Registrar may, on application being made to him in the prescribed manner, allow, the company has been registered as the proprietor of the trade mark in respect of those goods or services, the registration shall cease to have effect in respect thereof at the expiration of that period and the Registrar shall amend the register accordingly.

47. (1) A registered trade mark may be taken off the register in respect of the goods or services in respect of which it is registered on application made in the prescribed manner to the Registrar or the Appellate Board by any person aggrieved on the ground either—

Removal from register and imposition of limitations on ground of non-use.

(a) that the trade mark was registered without any *bona fide* intention on the part of the applicant for registration that it should be used in relation to those goods or services by him or, in a case to which the provisions of section 46 apply, by the company concerned or the registered user, as the case may be, and that there has, in fact, been no *bona fide* use of the trade mark in relation to those goods or services by any proprietor thereof for the time being up to a date three months before the date of the application; or

(b) that up to a date three months before the date of the application, a continuous period of five years from the date on which the trade mark is actually entered in the register or longer had elapsed during which the trade mark was registered and during which there was no *bona fide* use thereof in relation to those goods or services by any proprietor thereof for the time being;

Provided that except where the applicant has been permitted under section 12 to register an identical or nearly resembling trade mark in respect of the goods or services in question, or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark, the tribunal may refuse an application under clause (a) or clause (b) in relation to any goods or services, if it is shown that there has been, before

the relevant date or during the relevant period, as the case may be, *bona fide* use of the trade mark by any proprietor thereof for the time being in relation to—

(i) goods or services of the same description; or

(ii) goods or services associated with those goods or services of that description being goods or services, as the case may be, in respect of which the trade mark is registered.

(2) Where in relation to any goods or services in respect of which a trade mark is registered—

(a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in a particular place in India (otherwise than for export from India), or in relation to goods to be exported to a particular market outside India; or in relation to services for use or available for acceptance in a particular place in India or for use in a particular market outside India; and

(b) a person has been permitted under section 12 to register an identical or nearly resembling trade mark in respect of those goods, under a registration extending to use in relation to goods to be so sold, or otherwise traded in, or in relation to goods to be so exported, or in relation to services for use or available for acceptance in that place or for use in that country, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark,

on application by that person in the prescribed manner to the Appellate Board or to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as it thinks proper for securing that that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or for the purposes of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade, which includes restrictions on the use of the trade mark in India imposed by any law or regulation and not to any intention to abandon or not to use the trade mark in relation to the goods or services to which the application relates.

Registered  
users.

48. (1) Subject to the provisions of section 49, a person other than the registered proprietor of a trade mark may be registered as a registered user thereof in respect of any or all of the goods or services in respect of which the trade mark is registered.

(2) The permitted use of a trade mark shall be deemed to be used by the proprietor thereof, and shall be deemed not to be used by a person other than the proprietor, for the purposes of section 47 or for any other purpose for which such use is material under this Act or any other law.

Registration as  
registered user.

49. (1) Where it is proposed that a person should be registered as a registered user of a trade mark, the registered proprietor and the proposed registered user shall jointly apply in writing to the Registrar in the prescribed manner, and every such application shall be accompanied by—

(a) the agreement in writing or a duly authenticated copy thereof, entered into between the registered proprietor and the proposed registered user with respect to the permitted use of the trade mark; and

(b) an affidavit made by the registered proprietor or by some person authorised to the satisfaction of the Registrar to act on his behalf,—

(i) giving particulars of the relationship, existing or proposed, between the registered proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which

their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;

(ii) stating the goods or services in respect of which registration is proposed;

(iii) stating the conditions or restrictions, if any, proposed with respect to the characteristics of the goods or services, to the mode or place of permitted use, or to any other matter;

(iv) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof; and

(c) such further documents or other evidence as may be required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, the Registrar shall register the proposed registered user in respect of the goods or services as to which he is so satisfied.

(3) The Registrar shall issue notice in the prescribed manner of the registration of a person as a registered user, to other registered users of the trade mark, if any.

(4) The Registrar shall, if so requested by the applicant, take steps for securing that information given for the purposes of an application under this section (other than matters entered in the register) is not disclosed to rivals in trade.

50. (1) Without prejudice to the provisions of section 57, the registration of a person as registered user—

(a) may be varied by the Registrar as regards the goods or services in respect of which it has effect on the application in writing in the prescribed manner of the registered proprietor of the trade mark;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark;

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely:—

(i) that the registered user has used the trade mark otherwise than in accordance with the agreement under clause (a) of sub-section (1) of section 49 or in such way as to cause or to be likely to cause, deception or confusion;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for registration which if accurately represented or disclosed would not have justified the registration of the registered user;

(iii) that the circumstances have changed since the date of registration in such a way that at the date of such application for cancellation they would not have justified registration of the registered user;

(iv) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the preformance of which he is interested;

(d) may be cancelled by the Registrar on his own motion or on the application in writing in the prescribed manner by any person, on the ground that any stipulation in the agreement between the registered proprietor and the registered user regarding

Power of  
Registrar for  
variation or  
cancellation of  
registration as  
registered user.



the quality of the goods or services in relation to which the trade mark is to be used is either not being enforced or is not being complied with;

(e) may be cancelled by the Registrar in respect of any goods or services in relation to which the trade mark is no longer registered.

(2) The Registrar shall issue notice in the prescribed manner in respect of every application under this section to the registered proprietor and each registered user (not being the applicant) of the trade mark.

(3) The procedure for cancelling a registration shall be such as may be prescribed:

Provided that before cancelling of registration, the registered proprietor shall be given a reasonable opportunity of being heard.

Power of Registrar to call for information relating to agreement in respect of registered users.

51. (1) The Registrar may, at any time during the continuance of the registration of the registered user, by notice in writing, require the registered proprietor to confirm to him within one month that the agreement filed under clause (a) of sub-section (1) of section 49 continues to be in force.

(2) If the registered proprietor fails to furnish the confirmation within one month as required under sub-section (1), the registered user shall cease to be the registered user on the day immediately after the expiry of the said period and the Registrar shall notify the same.

Right of registered user to take proceedings against infringement.

52. (1) Subject to any agreement subsisting between the parties, a registered user may institute proceedings for infringement in his own name as if he were the registered proprietor, making the registered proprietor a defendant and the rights and obligations of such registered user in such case being concurrent with those of the registered proprietor.

(2) Notwithstanding anything contained in any other law, a registered proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

No right of permitted user to take proceeding against infringement.

53. A person referred to in sub-clause (ii) of clause (r) of sub-section (1) of section 2 shall have no right to institute any proceeding for any infringement.

Registered user not to have right of assignment or transmission.

54. Nothing in this Act shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

*Explanation I.*—The right of a registered user of a trade mark shall not be deemed to have been assigned or transmitted within the meaning of this section in the following cases, namely:—

(a) where the registered user being an individual enters into a partnership with any other person for carrying on the business concerned; but in any such case the firm may use the trade mark, if otherwise in force, only for so long as the registered user is a member of the firm;

(b) where the registered user being a firm subsequently undergoes a change in its constitution; but in any such case the reconstituted firm may use the trade mark, if otherwise in force, only for so long as any partner of the original firm at the time of its registration as registered user, continues to be a partner of the reconstituted firm.

*Explanation II.*—For the purposes of *Explanation I*, "firm" has the same meaning as in the Indian Partnership Act, 1932.

55. (1) Where under the provisions of this Act, use of a registered trade mark is required to be proved for any purpose, the tribunal may, if and, so far as it shall think right, accept use of a registered associated trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

Use of one of associated or substantially identical trade marks equivalent to use of another.

(2) The use of the whole of a registered trade mark shall, for the purpose of this Act, be deemed to be also use of any trade mark being a part thereof and registered in accordance with sub-section (1) of section 15 in the name of the same proprietor.

(3) Notwithstanding anything in section 32, the use of part of the registered trade mark in sub-section (2) shall not be conclusive as to its evidence of distinctiveness for any purpose under this Act.

56. (1) The application in India of trade mark to goods to be exported from India or in relation to services for use outside India and any other act done in India in relation to goods to be so exported or services so rendered outside India which, if done in relation to goods to be sold or services provided or otherwise traded in within India would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods or services for any purpose for which such use is material under this Act or any other law.

Use of trade mark for export trade and use when form of trade connection changes.

(2) The use of a registered trade mark in relation to goods or services between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods or services between which and the said person or a predecessor in title of that person a different form of connection in the course of trade subsisted or subsists.

## CHAPTER VII

### RECTIFICATION AND CORRECTION OF THE REGISTER

57. (1) On application made in the prescribed manner to the Appellate Board or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention, or failure to observe a condition entered on the register in relation thereto.

Power to cancel or vary registration and to rectify the register.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Appellate Board or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

(3) The tribunal may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(4) The tribunal, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Appellate Board rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

58. (1) The Registrar may, on application made in the prescribed manner by the registered proprietor,

Correction of register.

(a) correct any error in the name, address or description of the registered proprietor of a trade mark, or any other entry relating to the trade mark;

(b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark;

(c) cancel the entry of a trade mark on the register;

(d) strike out any goods or classes of goods or services from those in respect of which a trade mark is registered,

and may make any consequential amendment or alteration in the certificate of registration, and for that purpose, may require the certificate of registration to be produced to him.

(2) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, and after notice to the registered proprietor, correct any error, or enter any change, in the name, address or description of the registered user.

Alteration of  
registered trade  
marks.

59. (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the trade mark as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

Adaptation of  
entries in  
register to  
amended or  
substituted  
classification of  
goods or  
services.

60. (1) The Registrar shall not make any amendment of the register which would have the effect of adding any goods or classes of goods or services to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made or of antedating the registration of a trade mark in respect of any goods or services:

Provided that this sub-section, shall not apply when the Registrar is satisfied that compliance therewith would involve undue complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods or services and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be brought to the notice of the registered proprietor of the trade mark affected and advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

## CHAPTER VIII

### COLLECTIVE MARKS

Special  
provisions for  
collective  
marks.

61. (1) The provisions of this Act shall apply to collective marks subject to the provisions contained in this Chapter.

(2) In relation to a collective mark the reference in clause (zb) of sub-section (1) of section 2 to distinguishing the goods or services of one person from those of others shall be construed as a reference to distinguishing the goods or services of members of an association of persons which is the proprietor of the mark from those of others.

62. A collective mark shall not be registered if it is likely to deceive or cause confusion on the part of public in particular if it is likely to be taken to be something other than a collective mark, and in such case the Registrar may require that a mark in respect of which application is made for registration comprise some indication that it is a collective mark.

Collective mark not to be misleading as to character or significance.

63. (1) An application for registration of a collective mark shall be accompanied by the regulations governing the use of such collective mark.

Application to be accompanied by regulations governing use of collective marks.

(2) The regulations referred to in sub-section (1) shall specify the persons authorised to use the mark, the conditions of membership of the association and, the conditions of use of the mark, including any sanctions against misuse and such other matters as may be prescribed.

64. If it appears to the Registrar that the requirements for registration are satisfied, he shall accept the application together with the regulations, either unconditionally or subject to such conditions including amendments of the said regulations, if any, as he may deem fit or refuse to accept it and if accepted shall notify the regulations.

Acceptance of application and regulations by Registrar.

65. The regulations referred to in sub-section (1) of section 63 shall be open to public inspection in the same way as the register as provided in section 148.

Regulations to be open to inspection.

66. Any amendment of regulations referred to in sub-section (1) of section 63 shall not be effective unless the amended regulations are filed with the Registrar, and accepted and published by him in accordance with section 64.

Amendment of regulations.

67. In a suit for infringement instituted by the registered proprietor of a collective mark as plaintiff the court shall take into account any loss suffered or likely to be suffered by authorised users and may give such directions as it thinks fit as to the extent to which the plaintiff shall hold the proceeds of any pecuniary remedy on behalf of such authorised users.

Infringement proceedings by registered proprietor of collective mark.

68. The registration of a collective mark may also be removed from the register on the ground—

Additional grounds for removal of registration of collective mark.

(a) that the manner in which the collective mark has been used by the proprietor or authorised user has caused it to become liable to mislead the public as a collective mark; or

(b) that the proprietor has failed to observe, or to secure the observance of the regulations governing the use of the mark.

*Explanation I.*—For the purposes of this Chapter, unless the context otherwise requires, “authorised user” means a member of an association authorised to use the registered collective mark of the association.

*Explanation II.*—For the purposes of this Act, use of a collective mark by an authorised user referred to in *Explanation I* shall be deemed to be the use by the registered proprietor thereof.

## CHAPTER IX

### CERTIFICATION TRADE MARKS

69. The following provisions of this Act shall not apply to certification trade marks, that is to say,—

Certain provisions of this Act not applicable to certification trade marks.

(a) clauses (a) and (c) of sub-section (1) of section 9;

(b) sections 18, 20 and 21, except as expressly applied by this Chapter;

(c) sections 28, 29, 30, 41, 42, 47, 48, 49, 50, 52, 54 and sub-section (2) of section 56;



## (d) Chapter XII, except section 107.

Registration of  
certification  
trade marks.

70. A mark shall not be registrable as a certification trade mark in the name of a person who carries on a trade in goods of the kind certified or a trade of the provision of services of the kind certified.

Applications  
for registration  
of certification  
trade marks.

71. (1) An application for the registration of a mark as a certification trade mark shall be made to the Registrar in the prescribed manner by the person proposed to be registered as the proprietor thereof, and accompanied by a draft of the regulations to be deposited under section 74.

(2) Subject to the provisions of section 70, the provisions of sections 18, 19 and 22 shall apply in relation to an application under this section as they apply in relation to an application under section 18, subject to the modification that references therein to acceptance of an application shall be construed as references to authorisation to proceed with an application.

(3) In dealing under the said provisions with an application under this section, the tribunal shall have regard to the like considerations, so far as relevant, as if the application were applications under section 18 and to any other considerations relevant to applications under this section, including the desirability of securing that a certification trade mark shall comprise some indication that it is a certification trade mark.

Consideration  
of application  
for registration  
by Registrar.

72. (1) The Registrar shall consider the application made under section 71 with regard to the following matters, namely:—

(a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered;

(b) whether the draft of the regulations to be filed under section 74 is satisfactory;

(c) whether in all the circumstances the registration applied for would be to the public advantage,

and may either—

(i) refuse the application; or

(ii) accept the application and approve the said draft of the regulations either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modifications of the application or of the regulations, which he thinks requisite having regard to any of the said matters.

(2) Except in the case of acceptance and approval without modification and unconditionally, the Registrar shall not decide any matter under sub-section (1) without giving the applicant an opportunity of being heard.

Opposition to  
registration of  
certification  
trade marks.

73. When an application has been accepted, the Registrar shall, as soon as may be thereafter, cause the application as accepted to be advertised in the prescribed manner, and the provisions of section 21 shall apply in relation to the registration of the mark as they apply in relation to an application under section 18.

Filing of  
regulations  
governing use  
of a certi-  
fication trade  
mark.

74. (1) There shall be filed at the Trade Marks Registry in respect of every mark registered as a certification trade mark regulations for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods or services and to authorise the use of the certification trade mark, and may contain any other provisions which the Registrar may by general or special order, require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the certification trade mark in accordance with the regulations); and regulations so filed shall be open to inspection in like manner as the register as provided in section 148.

(2) The regulations so filed may, on the application of the registered proprietor, be altered by the Registrar.

(3) The Registrar may cause such application to be advertised in any case where it appears to him expedient so to do, and where he does so, if within the time specified in the advertisement any person gives notice of opposition to the application, the Registrar shall not decide the matter without giving the parties an opportunity of being heard.

75. The right conferred by section 78 is infringed by any person who, not being the registered proprietor of the certification trade mark or a person authorised by him in that behalf under the regulations filed under section 74, using it in accordance therewith, uses in the course of trade, a mark, which is identical with, or deceptively similar to the certification trade mark in relation to any goods or services in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken as being a use as a trade mark.

Infringement of certification trade marks.

76. (1) Notwithstanding anything contained in this Act, the following acts do not constitute an infringement of the right to the use of a registered certification trade mark—

Acts not constituting infringement of certification trade marks.

(a) where a certification trade mark is registered subject to any conditions or limitations entered on the register, the use of any such mark in any mode, in relation to goods to be sold or otherwise traded in any place, or in relation to goods to be exported to any market or in relation to services for use or available for acceptance in any place, country or territory or in any other circumstances, to which having regard to any such limitations, the registration does not extend;

(b) the use of a certification trade mark in relation to goods or services certified by the proprietor of the mark if, as to those goods or services or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant regulations has applied the mark and has not subsequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the mark;

(c) the use of a certification trade mark in relation to goods or services adapted to form part of, or to be accessory to, other goods in relation to which the mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods or services are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods or services are certified by the proprietor.

(2) Clause (b) of sub-section (1) shall not apply to the case of use consisting of the application of a certification trade mark to goods or services; notwithstanding that they are such goods or services as are mentioned in that clause if such application is contrary to the regulations referred to in that clause.

(3) Where a certification trade mark is one of two or more trade marks registered under this Act, which are identical or nearly resemble each other, the use of any of those trade marks in exercise of the right to the use of that trade mark given by registration, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

77. The Registrar may, on the application in the prescribed manner of any person aggrieved and after giving the proprietor an opportunity of opposing the application, make such order as he thinks fit for expunging or varying any entry in the register to a certification trade mark, or for varying the regulations, on any of the following grounds, namely:—

Cancellation or varying of registration of certification trade marks.

(a) that the proprietor is no longer competent, in the case of any of the goods or services in respect of which the mark is registered, to certify those goods or services;

(b) that the proprietor has failed to observe any provisions of the regulations to be observed on his part;

(c) that it is no longer to the public advantage that the mark should remain registered;

(d) that it is requisite for the public advantage that if the mark remains registered, the regulations should be varied.

Rights  
conferred by  
registration of  
certification  
trade marks.

78. (1) Subject to the provisions of sections 34, 35 and 76, the registration of a person as a proprietor of certification trade mark in respect of any goods or services shall, if valid, give to that person the exclusive right to the use of the mark in relation to those goods or services.

(2) The exclusive right to the use of a certification trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

## CHAPTER X

### SPECIAL PROVISIONS FOR TEXTILE GOODS

Textile goods.

79. The Central Government may prescribe classes of goods (in this Chapter referred to as textile goods) to the trade marks used in relation to which the provisions of this Chapter shall apply; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.

Restriction on  
registration of  
textile goods.

80. (1) In respect of textile goods being piece goods—

(a) no mark consisting of a line heading alone shall be registrable as a trade mark;

(b) a line heading shall not be deemed to be capable of distinguishing;

(c) the registration of trade mark shall not give any exclusive right to the use of a line heading.

(2) In respect of any textile goods, the registration of letters or numerals, or any combination thereof, shall be subject to such conditions and restrictions as may be prescribed.

Stamping of  
piece goods,  
cotton yarn and  
thread.

81. (1) Piece goods, such as are ordinarily sold by length or by the piece, which have been manufactured, bleached, dyed, printed or finished in premises which are a factory, as defined in the Factories Act, 1948, shall not be removed for sale from the last of such premises in which they underwent any of the said processes without having conspicuously stamped in international form of Indian numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, or in standard metres or in standard metres and a fraction of such a metre, according to the real length of the piece, and, except when the goods are sold from the factory for export from India, without being conspicuously marked on each piece with the name of the manufacturer or of the occupier of the premises in which the piece was finally processed or of the wholesale purchaser in India of the piece.

63 of 1948.

(2) Cotton yarn such as is ordinarily sold in bundles, and cotton thread, namely, sewing, darning, crochet or handicraft thread, which have been manufactured, bleached, dyed or finished in any premises not exempted by the rules made under section 82 shall not be removed for sale from those premises unless, in accordance with the said rules in the case of yarn—

(a) the bundles are conspicuously marked with an indication of the weight of yarn in English or the metric system in each bundles; and

(b) the count of the yarn contained in the bundles and in the case of thread each unit is conspicuously marked with the length or weight of thread in the unit and in such other manner as may be required by the said rules; and

(c) except where the goods are sold from the premises for export from India, unless each bundle or unit is conspicuously marked with the name of the manufacturer or of the wholesale purchaser in India of the goods:

Provided that the rules made under section 82 shall exempt all premises where the work is done by members of one family with or without the assistance of not more than ten other employees, and all premises controlled by a co-operative society where not more than twenty workers are employed in the premises.

82. (1) For the purposes of this Act, the Central Government may make rules—

Determination  
of character of  
textile goods  
by sampling.

(a) to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge or weight, for the number of samples to be selected and tested and for the selection of the samples;

(b) to provide, for the manner in which for the purposes of section 81 cotton yarn and cotton thread shall be marked with the particulars required by that section, and for the exemption of certain premises used for the manufacture, bleaching, dying or finishing of cotton yarn or cotton thread from the provisions of that section; and

(c) declaring what classes of goods are included in the expression "piece goods such as are ordinarily sold by length or by the piece" for the purpose of section 81, of this Act or clause (n) of sub-section (2) of section 11 of the Customs Act, 1962.

52 of 1962.

(2) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub-section (1), the court or officer of customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(3) The average of the results of the testing in pursuance of rules under sub-section (1) or of an order under sub-section (2) shall be *prima facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(4) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (1), or of an order under sub-section (2), desires that any further samples of the goods be selected and tested, such further samples shall, on his written application and on the payment in advance by him to the court or officer of customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules made by the Central Government in this behalf or as, in the case of goods with respect to which provision is not made in such rules, the court or officer of customs may determine in the circumstances to be reasonable, the samples being selected in the manner prescribed under sub-section (1), or in sub-section (2), as the case may be.

(5) The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

## CHAPTER XI

### APPELLATE BOARD

83. The Central Government shall, by notification in the Official Gazette, establish an Appellate Board to be known as the Intellectual Property Appellate Board to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Establishment  
of Appellate  
Board.



Composition of  
Appellate  
Board.

84. (1) The Appellate Board shall consist of a Chairman, Vice-Chairman and such number of other Members, as the Central Government may, deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Appellate Board may be exercised by Benches thereof.

(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Technical Member and shall sit at such place as the Central Government may, by notification in the Official Gazette, specify.

(3) Notwithstanding anything contained in sub-section (2), the Chairman—

(a) may, in addition to discharging the functions of the Judicial Member or Technical Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Technical Member, of any other Bench;

(b) may transfer a Member from one Bench to another Bench;

(c) may authorise the Vice-Chairman, the Judicial Member or the Technical Member appointed to one Bench to discharge also the functions of the Judicial Member or the Technical Member, as the case may be, of another Bench.

(4) Where any Benches are constituted, the Central Government may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Board amongst the Benches and specify the matters which may be dealt with by each Bench.

(5) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench, the decision of the Chairman shall be final.

*Explanation.*— For the removal of doubts, it is hereby declared that the expression “matter” includes an appeal under section 91.

(6) If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

Qualifications  
for appointment  
as Chairman,  
Vice-Chairman,  
or other  
Members.

85. (1) A person shall not be qualified for appointment as the Chairman unless he—

(a) is, or has been, a Judge of a High Court; or

(b) has, for at least two years, held the office of a Vice-Chairman.

(2) A person shall not be qualified for appointment as the Vice-Chairman, unless he—

(a) has, for at least two years, held the office of a Judicial Member or a Technical Member; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service or any higher post for at least five years.

(3) A person shall not be qualified for appointment as a Judicial Member, unless he—

(a) has been a member of the Indian Legal Service and has held the post in Grade I of that Service for at least three years; or

(b) has, for at least ten years, held a civil judicial office.

(4) A person shall not be qualified for appointment as a Technical Member, unless he—

43 of 1958.

(a) has, for at least ten years, exercised functions of a tribunal under this Act or under the Trade and Merchandise Marks Act, 1958, or both, and has held a post not lower than the post of a Joint Registrar for at least five years; or

(b) has, for at least ten years, been an advocate of a proven specialised experience in trade mark law.

(5) Subject to the provisions of sub-section (6), the Chairman, Vice-Chairman and every other Member shall be appointed by the President of India.

(6) No appointment of a person as the Chairman shall be made except after consultation with the Chief Justice of India.

86. The Chairman, Vice-Chairman or other Members shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains,—

(a) in the case of Chairman and Vice-Chairman, the age of sixty-five years; and

(b) in the case of a Member, the age of sixty-two years, whichever is earlier

87. (1) In the event of or any vacancy in the office of the Chairman by reasons of his death, resignation or otherwise, the Vice-Chairman and in his absence the senior-most Member shall act as Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to his absence, illness or any other cause, the Vice-Chairman and in his absence the senior-most Member shall discharge the functions of the Chairman until the date on which the Chairman resumes his duty.

88. (1) The salaries and allowances payable to, and other terms and conditions of service (including pension, gratuity and other retirement benefits), of the Chairman, Vice-Chairman and other Members shall be such as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), a person who, immediately before the date of assuming office as the Chairman, Vice-Chairman or other Member was in service of Government, shall be deemed to have retired from service on the date on which he enters upon office as the Chairman, Vice-Chairman or other Member.

89. (1) The Chairman, Vice-Chairman or any other Member may, by notice in writing under his hand addressed to the President of India, resign his office:

Provided that the Chairman, Vice-Chairman or any other Member shall, unless he is permitted by the President of India to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

(2) The Chairman, Vice-Chairman or any other Member shall not be removed from his office except by an order made by the President of India on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which the Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairman, Vice-Chairman or other Member referred to in sub-section (2).

90. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Appellate Board in the discharge of its functions and provide the Appellate Board with such officers and other employees as it may think fit.

Term of office of Chairman, Vice-Chairman and other Members.

Vice-Chairman or senior-most Member to act as Chairman or discharge his functions in certain circumstances.

Salaries, allowances and other terms and conditions of service of Chairman, Vice-Chairman and other Members.

Resignation and removal.

Staff of Appellate Board.

(2) The salaries and allowances and conditions of service of the officers and other employees of the Appellate Board shall be such as may be prescribed.

(3) The officers and other employees of the Appellate Board shall discharge their functions under the general superintendence of the Chairman in the manner as may be prescribed.

Appeals to  
Appellate  
Board.

91. (1) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder may prefer an appeal to the Appellate Board within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

(2) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (1):

Provided that an appeal may be admitted after the expiry of the period specified therefor, if the appellant satisfies the Appellate Board that he had sufficient cause for not preferring the appeal within the specified period.

(3) An appeal to the Appellate Board shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and by such fees as may be prescribed.

Procedure and  
powers of  
Appellate  
Board.

92. (1) The Appellate Board shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by principles of natural justice and subject to the provisions of this Act and the rules made thereunder, the Appellate Board shall have powers to regulate its own procedure including the fixing of places and times of its hearing.

5 of 1908.

(2) The Appellate Board shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

5 of 1908.

- (a) receiving evidence;
- (b) issuing commissions for examination of witnesses;
- (c) requisitioning any public record; and
- (d) any other matter which may be prescribed.

(3) Any proceeding before the Appellate Board shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, and the Appellate Board shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

Bar of  
jurisdiction of  
courts, etc.

93. No court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-section (1) of section 91.

Bar to appear  
before  
Appellate  
Board.

94. On ceasing to hold office, the Chairman, Vice-Chairman or other Members shall not appear before the Appellate Board or the Registrar.

Conditions as  
to making of  
interim orders.

95. Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or any other manner) shall be made on, or in any proceedings relating to, an appeal unless—

(a) copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is made or proposed to be made; and

(b) opportunity is given to such party to be heard in the matter.

96. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

Power of Chairman to transfer cases from one Bench to another.

97. (1) An application for rectification of the register made to the Appellate Board under section 57 shall be in such form as may be prescribed.

Procedure for application for rectification, etc., before Appellate Board.

(2) A certified copy of every order or judgment of the Appellate Board relating to a registered trade mark under this Act shall be communicated to the Registrar by the Board and the Registrar shall give effect to the order of the Board and shall, when so directed, amend the entries in, or rectify, the register in accordance with such order.

98. (1) The Registrar shall have the right to appear and be heard—

Appearance of Registrar in legal proceedings,

(a) in any legal proceedings before the Appellate Board in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the Trade Marks Registry is raised;

(b) in any appeal to the Board from an order of the Registrar on an application for registration of a trade mark—

(i) which is not opposed, and the application is either refused by the Registrar or is accepted by him subject to any amendments, modifications, conditions or limitations, or

(ii) which has been opposed and the Registrar considers that his appearance is necessary in the public interest,

and the Registrar shall appear in any case if so directed by the Board.

(2) Unless the Appellate Board otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him affecting it, or of the practice of the Trade Marks Registry in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the proceeding.

99. In all proceedings under this Act before the Appellate Board the costs of the Registrar shall be in the discretion of the Board, but the Registrar shall not be ordered to pay the costs of any of the parties.

Costs of Registrar in proceedings before Appellate Board.

100. All cases of appeals against any order or decision of the Registrar and all cases pertaining to rectification of register, pending before any High Court, shall be transferred to the Appellate Board from the date as notified by the Central Government in the Official Gazette and the Appellate Board may proceed with the matter either *de novo* or from the stage it was so transferred.

Transfer of pending proceedings to Appellate Board.

## CHAPTER XII

### OFFENCES, PENALTIES AND PROCEDURE

101. (1) A person shall be deemed to apply a trade mark or mark or trade description to goods or services who—

Meaning of applying trade marks and trade descriptions.

(a) applies it to the goods themselves or uses it in relation to services; or

(b) applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture; or

(c) places, encloses or annexes any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, in or with any package or other thing to which a trade mark or mark or trade description has been applied; or



(d) uses a trade mark or mark or trade description in any manner reasonably likely to lead to the belief that the goods or services in connection with which it is used are designated or described by that trade mark or mark or trade description; or

(e) in relation to the goods or services uses a trade mark or trade description in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document and goods are delivered or services are rendered to a person in pursuance of a request or order made by reference to the trade mark or trade description as so used.

(2) A trade mark or mark or trade description shall be deemed to be applied to goods whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, the goods or to any package or other thing.

Falsifying and  
falsely  
applying trade  
marks.

102. (1) A person shall be deemed to falsify a trade mark who, either,—

(a) without the assent of the proprietor of the trade mark makes that trade mark or a deceptively similar mark; or

(b) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise.

(2) A person shall be deemed to falsely apply to goods or services a trade mark who, without the assent of the proprietor of the trade mark,—

(a) applies such trade mark or a deceptively similar mark to goods or services or any package containing goods;

(b) uses any package bearing a mark which is identical with or deceptively similar to the trade mark of such proprietor, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the proprietor of the trade mark.

(3) Any trade mark falsified as mentioned in sub-section (1) or falsely applied as mentioned in sub-section (2), is in this Act referred to as a false trade mark.

(4) In any prosecution for falsifying a trade mark or falsely applying a trade mark to goods or services, the burden of proving the assent of the proprietor shall lie on the accused.

Penalty for  
applying false  
trade marks,  
trade  
descriptions,  
etc.

103. Any person who—

(a) falsifies any trade mark; or

(b) falsely applies to goods or services any trade mark; or

(c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a trade mark; or

(d) applies any false trade description to goods or services; or

(e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 139, a false indication of such country, place, name or address; or

(f) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 139; or

(g) causes any of the things above-mentioned in this section to be done,

shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

104. Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things, or provides or hires services, to which any false trade mark or false trade description is applied or which, being required under section 139 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or services provided, as the case may be, are without the indications so required, shall, unless he proves,—

Penalty for selling goods or providing services to which false trade mark or false trade description is applied.

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description or that any offence had been committed in respect of the goods or services; or

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things or services; or

(c) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

105. Whoever having already been convicted of an offence under section 103 or section 104 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Enhanced penalty on second or subsequent conviction.

Provided that the court may, for adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of this Act.

106. If any person removes or attempts to remove or causes or attempts to cause to be removed for sale from any premises referred to in section 81 or sells or exposes for sale or has in his possession for sale or for any purpose of trade or manufacture piece goods or cotton yarn or cotton thread which is not marked as required by that section, every such piece and every such bundle of yarn and all such thread and everything used for the packing thereof shall be forfeited to Government and such person shall be punishable with fine which may extend to one thousand rupees.

Penalty for removing piece goods, etc., contrary to section 81.

107. (1) No person shall make any representation—

(a) with respect to a mark, not being a registered trade mark, to the effect that it is a registered trade mark; or

(b) with respect to a part of a registered trade mark, not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark; or

(c) to the effect that a registered trade mark is registered in respect of any goods or services in respect of which it is not in fact registered; or

Penalty for falsely representing a trade mark as registered.

(d) to the effect that registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitation entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) For the purposes of this section, the use in India in relation to a trade mark of the word "registered", or of any other expression, symbol or sign referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

(a) where that word or other expression, symbol or sign is used in direct association with other words delineated in characters at least as large as those in which that word or other expression, symbol or sign is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside India being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside India and in relation solely to goods to be exported to that country or in relation to services for use in that country.

Penalty for improperly describing a place of business as connected with the Trade Marks Office.

108. If any person uses on his place of business, or on any document issued by him, or otherwise, words which would reasonably lead to the belief that his place of business is, or is officially connected with, the Trade Marks Office, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for falsification of entries in the register.

109. If any person makes, or causes to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

No offence in certain cases.

110. The provisions of sections 102, 103, 104 and 105 shall, in relation to a registered trade mark or proprietor of such mark, be subject to the rights created or recognised by this Act and no act or omission shall be deemed to be an offence under the aforesaid sections if,—

(a) the alleged offence relates to a registered trade mark and the act or omission is permitted under this Act; and

(b) the alleged offence relates to a registered or an unregistered trade mark and the act or omission is permitted under any other law for the time being in force.

Forfeiture of goods.

111. (1) Where a person is convicted of an offence under section 103 or section 104 or section 105 or is acquitted of an offence under section 103 or section 104 on proof that he acted without intent to defraud, or under section 104 on proof of the matters specified in clause (a), clause (b) or clause (c) of that section, the court convicting or acquitting him may direct the forfeiture to Government of all goods and things by means of, or in relation to, which the offence has been committed, or but for such proof as aforesaid would have been committed.

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the court to which in appealable cases appeals lie from sentences of the court which directed the forfeiture.

(4) When a forfeiture is directed on a conviction, the court, before whom the person is convicted, may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

112. Where a person accused of an offence under section 103 proves—

(a) that in the ordinary course of his business he is employed on behalf of other persons to apply trade marks or trade descriptions, or as the case may be, to make dies, blocks, machines, plates, or other instruments for making, or being used in making, trade marks; and

(b) that in the case which is the subject of the charge he was so employed, and was not interested in the goods or other thing by way of profit or commission dependent on the sale of such goods or providing of services, as the case may be; and

(c) that, having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark or trade description; and

(d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the trade mark or trade description was applied,

he shall be acquitted.

113. (1) Where the offence charged under section 103 or section 104 or section 105 is in relation to a registered trade mark and the accused pleads that the registration of the trade mark is invalid, the following procedure shall be followed:—

(a) If the court is satisfied that such defence is *prima facie* tenable, it shall not proceed with the charge but shall adjourn the proceeding for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Appellate Board under this Act, for the rectification of the register on the ground that the registration is invalid.

(b) If the accused proves to the court that he has made such application within the time so limited or within such further time as the court may for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification.

(c) If within a period of three months or within such extended time as may be allowed by the court the accused fails to apply to the Appellate Board for rectification of the register, the court shall proceed with the case as if the registration were valid.

(2) Where before the institution of a complaint of an offence referred to in subsection (1), any application for the rectification of the register concerning the trade mark in question on the ground of invalidity of the registration thereof has already been properly made to and is pending before the tribunal, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification in so far as the complainant relies upon the registration of his mark.

114. (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Exemption of certain persons employed in ordinary course of business.

Procedure where invalidity of registration is pleaded by the accused.

Offences by companies.



Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Cognizance of certain offences and the powers of police officer for search and seizure.

115. (1) No court shall take cognizance of an offence under section 107 or section 108 or section 109 except on complaint in writing made by the Registrar or any officer authorised by him in writing:

Provided that in relation to clause (c) of sub-section (1) of section 107, a court shall take cognizance of an offence on the basis of a certificate issued by the Registrar to the effect that a registered trade mark has been represented as registered in respect of any goods or services in respect of which it is not in fact registered.

(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try an offence under this Act.

(3) The offences under section 103 or section 104 or section 105 shall be cognizable.

(4) Any police officer not below the rank of deputy superintendent of police or equivalent, may, if he is satisfied that any of the offences referred to in sub-section (3) has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before a Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be:

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained.

(5) Any person having an interest in any article seized under sub-section (4), may, within fifteen days of such seizure, make an application to the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, for such article being restored to him and the Magistrate, after hearing the applicant and the prosecution, shall make such order on the application as he may deem fit.

Evidence of origin of goods imported by sea.

116. In the case of goods brought into India by sea, evidence of the port of shipment shall, in a prosecution for an offence under this Act or under clause (b) of section 112 of the Customs Act, 1962, relating to confiscation of goods under clause (d) of section 111 and notified by the Central Government under clause (n) of sub-section (2) of section 11 of the said Act for the protection of trade marks relating to import of goods, be *prima facie* evidence of the place or country in which the goods are made or produced.

52 of 1962.

Costs of defence or prosecution.

117. In any prosecution under this Act, the court may order such costs to be paid by the accused to the complainant, or by the complainant to the accused, as the court deems reasonable having regard to all the circumstances of the case and the conduct of the parties and the costs so awarded shall be recoverable as if they were a fine.

-52 of 1962.

118. No prosecution for an offence under this Act or under clause (b) of section 112 of the Customs Act, 1962, relating to confiscation of goods under clause (d) of section 111 and notified by the Central Government under clause (n) of sub-section (2) of section 11 of the said Act for the protection of trade marks, relating to import of goods shall be commenced after expiration of three years next after the commission of the offence charged, or two years after the discovery thereof by the prosecutor, whichever expiration first-happens.

Limitation of prosecution.

119. An officer of the Government whose duty it is to take part in the enforcement of the provisions of this Chapter shall not be compelled in any court to say whence he got any information as to the commission of any offence against this Act.

Information as to commission of offence.

120. If any person, being within India, abets the commission, without India, of any act which, if committed in India, would, under this Act, be an offence, he may be tried for such abetment in any place in India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

Punishment of abetment in India of acts done out of India.

121. The Central Government may, by notification in the Official Gazette, issue instructions for the limits of variation, as regards number, quantity, measure, gauge or weight which are to be recognised by criminal courts as permissible in the case of any goods.

Instructions of Central Government as to permissible variation to be observed by criminal courts.

## CHAPTER XIII

## MISCELLANEOUS

122. No suit or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Protection of action taken in good faith.

45 of 1860.

123. Every person appointed under this Act and every Member of the Appellate Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Certain persons to be public servants.

124. (1) Where in any suit for infringement of a trade mark—

(a) the defendant pleads that registration of the plaintiff's trade mark is invalid; or

(b) the defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plaintiff pleads the invalidity of registration of the defendant's trade mark,

Stay of proceedings where the validity of registration of the trade mark is questioned, etc.

the court trying the suit (hereinafter referred to as the court), shall,—

(i) if any proceedings for rectification of the register in relation to the plaintiff's or defendant's trade mark are pending before the Registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;

(ii) if no such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the plaintiff's or defendant's trade mark is *prima facie* tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.

(2) If the party concerned proves to the court that he has made any such application as is referred to in clause (b) (ii) of sub-section (1) within the time specified therein or within such extended time as the court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.

(3) If no such application as aforesaid has been made within the time so specified or within such extended time as the court may allow, the issue as to the validity of the registration of the trade mark concerned shall be deemed to have been abandoned and the court shall proceed with the suit in regard to the other issues in the case.

(4) The final order made in any rectification proceedings referred to in sub-section (1) or sub-section (2) shall be binding upon the parties and the court shall dispose of the suit conformably to such order in so far as it relates to the issue as to the validity of the registration of the trade mark.

(5) The stay of a suit for the infringement of a trade mark under this section shall not preclude the court from making any interlocutory order (including any order granting an injunction, directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit.

Application for rectification of register to be made to Appellate Board in certain cases.

125. (1) Where in a suit for infringement of a registered trade mark the validity of the registration of the plaintiff's trade mark is questioned by the defendant or where in any such suit the defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plaintiff questions the validity of the registration of the defendant's trade mark, the issue as to the validity of the registration of the trade mark concerned shall be determined only on an application for the rectification of the register and, notwithstanding anything contained in section 47 or section 57, such application shall be made to the Appellate Board and not to the Registrar.

(2) Subject to the provisions of sub-section (1), where an application for rectification of the register is made to the Registrar under section 47 or section 57, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the Appellate Board.

Implied warranty on sale of marked goods.

126. Where a mark or a trade mark or trade description has been applied to the goods on sale or in the contract for sale of any goods or in relation to any service, the seller shall be deemed to warrant that the mark is a genuine mark and not falsely applied, or that the trade description is not a false trade description within the meaning of this Act unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of goods or providing of services on contract to and accepted by the buyer.

Powers of Registrar.

127. In all proceedings under this Act before the Registrar,—

(a) the Registrar shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(b) the Registrar may, subject to any rules made in this behalf under section 157, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a civil court;

Provided that the Registrar shall have no power to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or provision of services or to authorise the use of the mark;

(c) the Registrar may, on an application made in the prescribed manner, review his own decision.

Exercise of discretionary power by Registrar.

128. Subject to the provisions of section 131, the Registrar shall not exercise any discretionary or other power vested in him by this Act or the rules made thereunder adversely to a person applying for the exercise of that power without (if so required by that person within the prescribed time) giving to the person an opportunity of being heard.

**129.** In any proceeding under this Act before the Registrar, evidence shall be given by affidavit:

Evidence  
before  
Registrar.

Provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit.

**130.** If a person who is a party to a proceeding under this Act (not being a proceeding before the Appellate Board or a court) dies pending the proceeding, the Registrar may, on request, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without the substitution of his successor in interest.

Death of party  
to a pro-  
ceeding.

**131.** (1) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in this Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

Extension of  
time.

(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.

**132.** Where, in the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act or any Act relating to trade marks in force prior to the commencement of this Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so, desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice.

Abandonment.

**133.** (1) The Registrar may, on application made to him in the prescribed manner by any person who proposes to apply for the registration of a trade mark, give advice as to whether the trade mark appears to him *prima facie* to be distinctive.

Preliminary  
advice by the  
Registrar as to  
distinctiveness.

(2) If, on an application for the registration of a trade mark as to which the Registrar has given advice as aforesaid in the affirmative made within three months after the advice was given, the Registrar, after further investigation or consideration, gives notice, to the applicant of objection on the ground that the trade mark is not distinctive, the applicant shall be entitled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee paid on the filing of the application.

**134.** (1) No suit—

(a) for the infringement of a registered trade mark; or

(b) relating to any right in a registered trade mark; or

(c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered,

Suit for  
infringement,  
etc., to be  
instituted  
before District  
Court.

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.



*Explanation.*—For the purposes of sub-section (2), "person" includes the registered proprietor and the registered user.

Relief in suits  
for infringe-  
ment or for  
passing off.

135. (1) The relief which a court may grant in any suit for infringement or for passing off referred to in section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.

(2) The order of injunction under sub-section (1) may include an *ex parte* injunction or any interlocutory order for any of the following matters, namely:—

(a) for discovery of documents;

(b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;

(c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

(3) Notwithstanding anything contained in sub-section (1), the court shall not grant relief by way of damages (other than nominal damages) or on account of profits in any case—

(a) where in a suit for infringement of a trade mark, the infringement complained of is in relation to a certification trade mark or collective mark; or

(b) where in a suit for infringement the defendant satisfies the court—

(i) that at the time he commenced to use the trade mark complained of in the suit, he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was on the register or that the plaintiff was a registered user using by way of permitted use; and

(ii) that when he became aware of the existence and nature of the plaintiff's right in the trade mark, he forthwith ceased to use the trade mark in relation to goods or services in respect of which it was registered; or

(c) where in a suit for passing off, the defendant satisfies the court—

(i) that at the time he commenced to use the trade mark complained of in the suit he was unaware and had no reasonable ground for believing that the trade mark of the plaintiff was in use; and

(ii) that when he became aware of the existence and nature of the plaintiff's trade mark he forthwith ceased to use the trade mark complained of.

Registered  
user to be  
impleaded in  
certain  
proceedings.

136. (1) In every proceeding under Chapter VII or under section 91, every registered user of a trade mark using by way of permitted use, who is not himself an applicant in respect of any proceeding under that Chapter or section, shall be made a party to the proceeding.

(2) Notwithstanding anything contained in any other law, a registered user so made a party to the proceeding shall not be liable for any costs unless he enters an appearance and takes part in the proceeding.

Evidence of  
entries in  
register, etc.,  
and things done  
by the  
Registrar.

137. (1) A copy of any entry in the register or of any document referred to in sub-section (1) of section 148 purporting to be certified by the Registrar and sealed with the seal of the Trade Marks Registry shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or things having been done or not done.

138. The Registrar or any officer of the Trade Marks Registry shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special cause.

Registrar and other officers not compellable to produce register, etc.

139. (1) The Central Government may, by notification in the Official Gazette, require that goods of any class specified in the notification which are made or produced beyond the limits of India and imported into India, or, which are made or produced within the limits of India, shall, from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an indication of the country or place in which they were made or produced, or of the name and address of the manufacturer or the person for whom the goods were manufactured.

Power to require goods to show indication of origin.

(2) The notification may specify the manner in which such indication shall be applied that is to say, whether to goods themselves or in any other manner, and the times or occasions on which the presence of the indication shall be necessary, that is to say, whether on importation only, or also at the time of sale, whether by wholesale or retail or both.

(3) No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interests of dealers in, or manufacturers, producers, or users of, the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, with or without such inquiry, as the Central Government may consider necessary.

10 of 1897.

(4) The provisions of section 23 of the General Clauses Act, 1897 shall apply to the issue of a notification under this section as they apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication.

(5) A notification under this section shall not apply to goods made or produced beyond the limits of India and imported into India, if in respect of those goods, the Commissioner of Customs is satisfied at the time of importation that they are intended for exportation whether after transshipment in or transit through India or otherwise.

140. (1) The proprietor or a licensee of a registered trade mark may give notice in writing to the Collector of Customs to prohibit the importation of any goods if the import of the said goods constitute infringement under clause (c) of sub-section (6) of section 29.

Power to require information of imported goods bearing false trade marks.

52 of 1962.

(2) Where goods, which are prohibited to be imported into India by notification of the Central Government under clause (n) of sub-section (2) of section 11 of the Customs Act, 1962, for the protection of trade marks, and are liable to confiscation on importation under that Act, are imported into India, the Commissioner of Customs if, upon representation made to him, he has reason to believe that the trade mark complained of is used as a false trade mark, may require the importer of the goods, or his agent, to produce any documents in his possession relating to the goods and to furnish information as to the name and address of the person by whom the goods were consigned to India and the name and address of the person to whom the goods were sent in India.

(3) The importer or his agent shall, within fourteen days, comply with the requirement as aforesaid, and if he fails to do so, he shall be punishable with fine which may extend to five hundred rupees.

(4) Any information obtained from the importer of the goods or his agent under this section may be communicated by the Commissioner of Customs to the registered proprietor or registered user of the trade mark which is alleged to have been used as a false trade mark.

Certificate of  
validity.

141. If in any legal proceeding for rectification of the register before the Appellate Board a decision is on contest given in favour of the registered proprietor of the trade mark on the issue as to the validity of the registration of the trade mark, the Appellate Board may grant a certificate to that effect, and if such a certificate is granted, then, in any subsequent legal proceeding in which the said validity comes into question the said proprietor on obtaining a final order or judgment in his favour affirming validity of the registration of the trade mark shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full cost charges and expenses as between legal practitioner and client.

Groundless  
threats of legal  
proceedings.

142. (1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding for infringement of a trade mark which is registered, or alleged by the first-mentioned person to be registered, or with some other like proceeding, a person aggrieved may, whether the person making the threats is or is not the registered proprietor or the registered user of the trade mark, bring a suit against the first-mentioned person and may obtain a declaration to the effect that the threats are unjustifiable, and an injunction against the continuance of the threats and may recover such damages (if any) as he has sustained, unless the first-mentioned person satisfies the court that the trade mark is registered and that the acts in respect of which the proceedings were threatened, constitute, or, if done, would constitute, an infringement of the trade mark.

(2) The last preceding sub-section does not apply if the registered proprietor of the trade mark, or a registered user acting in pursuance of sub-section (1) of section 52 with due diligence commences and prosecutes an action against the person threatened for infringement of the trade mark.

(3) Nothing in this section shall render a legal practitioner or a registered trade marks agent liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

(4) A suit under sub-section (1) shall not be instituted in any court inferior to a District Court.

Address for  
service.

143. An address for service stated in an application or notice of opposition shall for the purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case may be, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them by post to the address for service of the applicant or opponent, as the case may be.

Trade usages,  
etc., to be taken  
into consi-  
deration.

144. In any proceeding relating to a trade mark, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get up legitimately used by other persons.

Agents.

145. Where, by or under this Act, any act, other than the making of an affidavit, is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done instead of by that person himself, by a person duly authorised in the prescribed manner, who is—

- (a) a legal practitioner, or
- (b) a person registered in the prescribed manner as a trade marks agent, or
- (c) a person in the sole and regular employment of the principal.

Marks  
registered by  
an agent or  
representative  
without  
authority.

146. If an agent or a representative of the proprietor of a registered trade mark, without authority uses or attempts to register or registers the mark in his own name, the proprietor shall be entitled to oppose the registration applied for or secure its cancellation or rectification of the register so as to bring him as the registered proprietor of the said mark by assignment in his favour:

Provided that such action shall be taken within three years of the registered proprietor of the trade mark becoming aware of the conduct of the agent or representative.

147. There shall be kept under the direction and supervision of the Registrar—

Indexes.

- (a) an index of registered trade marks;
- (b) an index of trade marks in respect of which applications for registration are pending;
- (c) an index of the names of the proprietors of registered trade marks; and
- (d) an index of the names of registered users.

148. (1) Save as otherwise provided in sub-section (4) of section 49,—

Documents open to public inspection.

- (a) the register and any document upon which any entry in the register is based;
- (b) every notice of opposition to the registration of a trade mark application for rectification before the Registrar, counter-statement thereto, and any affidavit or document filed by the parties in any proceedings before the Registrar;
- (c) all regulations deposited under section 63 or section 74, and all applications under section 66 or section 77 for varying such regulations;
- (d) the indexes mentioned in section 147; and
- (e) such other documents as the Central Government may, by notification in the Official Gazette, specify,

shall, subject to such conditions as may be prescribed, be open to public inspection at the Trade Marks Registry:

Provided that when such register is maintained wholly or partly on computer, the inspection of such register under this section shall be made by inspecting the computer print-out of the relevant entry in the register so maintained on computer.

(2) Any person may, on an application to the Registrar and on payment of such fees as may be prescribed, obtain a certified copy of any entry in the register or any document referred to in sub-section (1).

149. The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution by or under the Registrar of this Act.

Reports of Registrar to be placed before Parliament.

150. (1) There shall be paid in respect of applications and registration and other matters under this Act such fees and surcharge as may be prescribed by the Central Government.

Fees and surcharge.

(2) Where a fee is payable in respect of the doing of an act by the Registrar, the Registrar shall not do that act until the fee has been paid.

(3) Where a fee is payable in respect of the filing of a document at the Trade Marks Registry, the document shall be deemed not to have been filed at the registry until the fee has been paid.

151. Nothing in Chapter XII shall—

Savings in respect of certain matters in Chapter XII.

(a) exempt any person from any suit or other proceeding which might, but for anything in that Chapter, be brought against him; or

(b) entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution for an offence under that Chapter or against clause (h) of section 112 of the Customs Act, 1962 relating to confiscation of goods under clause (d) of section 111 of that Act and notified by the Central Government under clause (n) of sub-section (2) of section 11 thereof for the protection of trade marks relating to import of goods; or



(c) be construed so as to render liable to any prosecution or punishment any servant of a master resident in India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

Declaration as to ownership of trade mark not registrable under the Registration Act, 1908.

152. Notwithstanding anything contained in the Registration Act, 1908, no document declaring or purporting to declare the ownership or title of a person to a trade mark other than a registered trade mark shall be registered under that Act.

16 of 1908.

Government to be bound.

153. The provisions of this Act shall be binding on the Government.

Special provisions relating to applications for registration from citizens of convention countries.

154. (1) With a view to the fulfilment of a treaty, convention or arrangement with any country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisation outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country or group of countries or union of countries or Inter-Governmental Organisation to be a convention country or group of countries or union of countries or Inter-Governmental Organisations, as the case may be, for the purposes of this Act.

(2) Where a person has made an application for the registration of a trade mark in a convention country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisation and that person, or his legal representative or assignee, makes an application for the registration of the trade mark in India within six months after the date on which the application was made in the convention country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisations, the trade mark shall, if registered under this Act, be registered as of the date on which the application was made in the convention country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisation and that date shall be deemed for the purposes of this Act to be the date of registration.

(3) Where applications have been made for the registration of a trade mark in two or more convention countries or country which are members of group of countries or union of countries or Inter-Governmental Organisation, the period of six months referred to in the last preceding sub-section shall be reckoned from the date on which the earlier or earliest of those applications was made.

(4) Nothing in this Act shall entitle the proprietor of a trade mark to recover damages for infringement which took place prior to the date of application for registration under this Act.

Provision as to reciprocity.

155. Where any country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisation specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the registration and protection of trade marks as it accords to its own nationals, no national of such country or country which is a member of a group of countries or union of countries or Inter-Governmental Organisation, as the case may be, shall be entitled, either solely or jointly with any other person,—

(a) to apply for the registration of, or be registered as the proprietor of, a trade mark;

(b) to be registered as the assignee of the proprietor of a registered trade mark; or

(c) to apply for registration or be registered as a registered user of a trade mark under section 49.

Power of Central Government to remove difficulties.

156. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

157. (1) The Central Government may, by notification in the Official Gazette and subject to the conditions of previous publication, make rules to carry out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the matters to be included in the Register of Trade Marks under sub-section (1) of section 6, and the safeguards to be observed in the maintenance of records on computer floppies or diskettes or in any other electronic form under sub-section (2) of that section;

(ii) the manner of publication of alphabetical index of classification of goods and services under sub-section (1) of section 8;

(iii) the manner in which the Registrar may notify a word as an international non-proprietary name under section 13;

(iv) the manner of making an application for dissolution of an association under sub-section (5) of section 16;

(v) the manner of making an application for registration of a trade mark under sub-section (1) of section 18;

(vi) the manner of advertising of an application for registration under sub-section (1), and the manner of notifying corrections or amendments under sub-section (2), of section 20;

(vii) the manner of making an application and the fee payable for such application giving notice under sub-section (1) and sending counter-statements under sub-section (2) and submission of evidence and the time therefor under sub-section (4) of section 21;

(viii) the form of certificate of registration under sub-section (2), and the manner of giving notice to the applicant under sub-section (3) of section 23;

(ix) the forms of application for renewal and restoration the time within which such application is to be made and fee and surcharge if any payable with each application, under section 25 and the time within which the Registrar shall send a notice and the manner of such notice under sub-section (3) of that section;

(x) the manner of submitting statement of cases under sub-section (2) of section 40;

(xi) the manner of making an application by the proprietor of a trade mark under section 41;

(xii) the manner of making an application for assignment or transmission of a certification trade mark under section 43;

(xiii) the manner of making an application to the Registrar to register title under sub-section (1) of section 45;

(xiv) the manner in which and the period within which an application is to be made under sub-section (4) of section 46;

(xv) the manner of marking an application under sub-section (2) of section 47;

(xvi) the manner of making an application, documents and other evidence to accompany such application under sub-section (1) and the manner in which notice is to be issued under sub-section (3) of section 49;

(xvii) the manner of making an application under sub-section (1); the manner of issuing a notice under sub-section (2) and the procedure for cancelling a registration under sub-section (3) of section 50;

(xviii) the manner of making applications under sub-sections (1) and (2), the manner of giving notice under sub-section (4) and the manner of service of notice of rectification under sub-section (5) of section 57;

(xix) the manner of making an application under section 58;

(xx) the manner of making an application under sub-section (1), the manner of advertising an application, time and manner of notice by which application may be opposed under sub-sections (2) and (3) of section 59;

(xxi) the manner of advertisement under sub-section (2) of section 60;

(xxii) the other matters to be specified in the regulations under sub-section (2) of section 63;

(xxiii) the manner of making an application under sub-section (1) of section 71;

(xxiv) the manner of advertising an application under section 73;

(xxv) the manner of making an application under section 77;

(xxvi) the classes of goods under section 79;

(xxvii) the conditions and restrictions under sub-section (2) of section 80;

(xxviii) determination of character of textile goods by sampling under section 82;

(xxix) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairman, Vice-Chairman and other Members under sub-section (1) of section 88;

(xxx) the procedure for investigation of misbehaviour or incapacity of the Chairman, Vice-Chairman and other Members under sub-section (3) of section 89;

(xxxi) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Board under sub-section (2), and the manner in which the officers and other employees of the Appellate Board shall discharge their functions under sub-section (3), of section 90;

(xxxii) the form of making an appeal, the manner of verification and the fee payable under sub-section (3) of section 91;

(xxxiii) the form in which and the particulars to be included in the application to the Appellate Board under sub-section (1) of section 97;

(xxxiv) the manner of making an application for review under clause (c) of section 127;

(xxxv) the time within which an application is to be made to the Registrar for exercising his discretionary power under section 128;

(xxxvi) the manner of making an application and the fee payable therefor under sub-section (1) of section 131;

(xxxvii) the manner of making an application under sub-section (1) and the period for withdrawal of such application under sub-section (2) of section 133;

(xxxviii) the manner of authorising any person to act and the manner of registration as a trade mark agent under section 145;

(xxxix) the conditions for inspection of documents under sub-section (1) and the fee payable for obtaining a certified copy of any entry in the register under sub-section (2) of section 148;



(xl) the fees and surcharge payable for making applications and registration and other matters under section 150;

(xli) any other matter which is required to be or may be prescribed.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect in respect of the matters referred to in clauses (xxix) and (xxxi) of sub-section (2) from a date not earlier than the date of commencement of this Act, but no retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom sub-rule may be applicable.

(4) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

158. The enactment specified in the Schedule shall be amended in the manner specified therein.

Amendments.

43 of 1958.

159. (1) The Trade and Merchandise Marks Act, 1958 is hereby repealed.

Repeal and savings.

10 of 1897.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897, with respect to repeals, any notification, rule, order, requirement, registration, certificate, notice, decision, determination, direction, approval, authorisation, consent, application, request or thing made, issued, given or done under the Trade and Merchandise Marks Act, 1958 shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.

43 of 1958.

(3) The provisions of this Act shall apply to any application for registration of a trade mark pending at the commencement of this Act and to any proceedings consequent thereon and to any registration granted in pursuance thereof.

(4) Subject to the provisions of section 100 and notwithstanding anything contained in any other provision of this Act, any legal proceeding pending in any court at the commencement of this Act may be continued in that court as if this Act had not been passed.

(5) Notwithstanding anything contained in this Act, where a particular use of a registered trade mark is not an infringement of a trade mark registered before the commencement of this Act, then, the continued use of that mark shall not be an infringement under this Act.

(6) Notwithstanding anything contained in sub-section (2), the date of expiration of registration of a trade mark registered before the commencement of this Act shall be the date immediately after the period of seven years for which it was registered or renewed:

43 of 1958.

Provided that the registration of a defensive trade mark referred to in section 47 of the Trade and Merchandise Marks Act, 1958 shall cease to have effect on the date immediately after the expiry of five years of such commencement or after the expiry of the period for which it was registered or renewed, whichever is earlier.



## THE SCHEDULE

(See section 158)

## AMENDMENTS

Year	Act No.	Short title	Amendment
1956	1	The Companies Act, 1956	<p>(1) In section 20, for sub-section (2), the following sub-sections shall be substituted, namely:—</p> <p>"(2) Without prejudice to the generality of the foregoing power, a name which is identical with, or too nearly resembles,—</p> <p>(i) the name by which a company in existence has been previously registered, or</p> <p>(ii) a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999,</p> <p>may be deemed to be undesirable by the Central Government within the meaning of sub-section (1).</p> <p>(3) The Central Government may, before deeming a name as undesirable under clause (ii) of sub-section (2), consult the Registrar of Trade Marks."</p> <p>(II) In section 22, in sub-section (1),—</p> <p>(i) for the portion beginning with "if, through" and ending with "the first-mentioned company—" the following shall be substituted, namely:—</p> <p>"If, through inadvertence or otherwise, a company on its first registration, or on its registration by a new name, is registered by a name which,—</p> <p>(i) in the opinion of the Central Government, is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, whether under this Act or any previous companies law, the first-mentioned company, or</p> <p>(ii) on an application by a registered proprietor of a trade mark, is in the opinion of the Central Government identical with, or too nearly resembles, a registered trade-mark of such proprietor under the Trade Marks Act, 1999, such company,—";</p> <p>(ii) the following proviso shall be added, namely:—</p> <p>"Provided that no application under clause (ii) made by a registered proprietor of a trade mark after five years of coming to notice of registration of the company shall be considered by the Central Government. "</p>

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.



सत्यमेव जयते

# The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar. 8th June, 2000:

No. : RP/33/2000/Act-48/99/E.- The following Act of Parliament is re-published for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,  
(Legislative Department)

New Delhi, the 30th December, 1999 / Pausa 9, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 30th December, 1999 and is hereby published for general information :-

#### THE GEOGRAPHICAL INDICATIONS OF GOODS REGISTRATION AND PROTECTION ACT, 1999.

(Act No. 48 of 1999)

(30th December, 1999)

#### AN ACT

to provide for the registration and better protection of geographical indications relating to goods.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

#### CHAPTER I

#### PRELIMINARY

1. (1) This Act may be called the Geographical Indications of Goods (Registration and Protection) Act, 1999.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Short title,  
extent and  
commence-  
ment.

Definitions and  
interpretation.

2. (1) In this Act, unless the context otherwise requires,—

(a) "Appellate Board" means the Appellate Board established under section 83 of the Trade Marks Act, 1999;

(b) "authorised user" means the authorised user of a geographical indication registered under section 17;

(c) "deceptively similar" A geographical indication shall be deemed to be deceptively similar to another geographical indication if it so nearly resembles that other geographical indication as to be likely to deceive or cause confusion;

(d) "district court" has the meaning assigned to it in the Code of Civil Procedure, 1908;

5 of 1908.

(e) "geographical indication", in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

*Explanation.*—For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be;

(f) "goods" means any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff;

(g) "indication" includes any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies;

(h) "name" includes any abbreviation of a name;

(i) "package" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "producer", in relation to goods, means any person who,—

(i) if such goods are agricultural goods, produces the goods and includes the person who processes or packages such goods;

(ii) if such goods are natural goods, exploits the goods;

(iii) if such goods are handicraft or industrial goods, makes or manufactures the goods,

and includes any person who trades or deals in such production, exploitation, making or manufacturing, as the case may be, of the goods;

(l) "register" means the Register of Geographical Indications referred to in section 6;

(m) "registered" (with its grammatical variations) means registered under this Act;

(n) "registered proprietor", in relation to a geographical indication, means any association of persons or of producers or any organisation for the time being entered in the register as proprietor of the geographical indication;

(o) "Registrar" means the Registrar of Geographical Indications referred to in section 3;

(p) "tribunal" means the Registrar or, as the case may be, the Appellate Board before which the proceeding concerned is pending.

(2) Words and expressions used and not defined in this Act but defined in the Trade Marks Act, 1999 shall have the meanings respectively assigned to them in that Act.

(3) In this Act, unless the context otherwise requires, any reference—

(a) to the use of a geographical indication shall be construed as a reference to the use of a printed or other visual representation of the geographical indication;

(b) to the use of a geographical indication in relation to goods shall be construed as a reference to the use of the geographical indication upon, or in any physical or in any other relation whatsoever, to such goods;

(c) to a registered geographical indication shall be construed as including a reference to a geographical indication registered in the register;

(d) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (2) of section 3;

(e) to the Geographical Indications Registry shall be construed as including a reference to any office of the Geographical Indications Registry.

## CHAPTER II

### THE REGISTER AND CONDITIONS FOR REGISTRATION

3. (1) The Controller-General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 3 of the Trade Marks Act, 1999, shall be the Registrar of Geographical Indications.

Registrar of  
Geographical  
Indications.

(2) The Central Government may appoint such officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act, as he may from time to time authorise them to discharge.

4. Without prejudice to the generality of the provisions of sub-section (2) of section 3, the Registrar may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under the said sub-section (2) and deal with such matter himself either *de novo* or from the stage it was so withdrawn or transfer the same to another officer so appointed who may, subject to special directions in the order of transfer, proceed with the matter either *de novo* or from the stage it was so transferred.

Power of  
Registrar to  
withdraw or  
transfer cases,  
etc.

5. (1) For the purpose of this Act, there shall be established a Registry which shall be known as the Geographical Indications Registry.

Geographical  
Indications  
Registry and  
offices thereof.

(2) The head office of the Geographical Indications Registry shall be at such place as the Central Government may, by notification in the Official Gazette, specify, and for the purpose of facilitating the registrations of geographical indications, there may be established at such places as the Central Government may think fit branch offices of the Geographical Indications Registry.



(3) The Central Government may, by notification in the Official Gazette, define the territorial limits within which an office of the Geographical Indications Registry may exercise its functions.

(4) There shall be a seal of the Geographical Indications Registry.

Register of  
Geographical  
Indications.

6. (1) For the purposes of this Act, a record called the Register of geographical indications shall be kept at the head office of the Geographical Indications Registry, wherein shall be entered all registered geographical indications with the names, addresses and descriptions of the proprietors, the names, addresses and descriptions of authorised users and such other matters relating to registered geographical indications as may be prescribed and such registers may be maintained wholly or partly on computer.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Registrar to keep the records wholly or partly in computer floppies or diskettes or in any other electronic form, subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly in computer floppies or diskettes or in any other electronic form under sub-section (2), any reference in this Act to any entry in the register shall be construed as the reference to the entry as maintained on computer floppies or diskettes or in any other electronic form, as the case may be.

(4) No notice of any trust, express or implied or constructive, shall be entered in the register and no such notice shall be receivable by the Registrar.

(5) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Registrar.

(6) There shall be kept at each branch office of the Geographical Indications Registry a copy of the register and such other documents mentioned in section 78 as the Central Government may, by notification in the Official Gazette, direct.

Part A and  
Part B of the  
register.

7. (1) The register referred to in section 6 shall be divided into two Parts called respectively Part A and Part B.

(2) The particulars relating to the registration of the geographical indications shall be incorporated and form part of Part A of the register in the prescribed manner.

(3) The particulars relating to the registration of the authorised users shall be incorporated and form part of Part B of the register in the prescribed manner.

Registration to  
be in respect of  
particular  
goods and area.

8. (1) A geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, or a region or locality in that territory, as the case may be.

(2) The Registrar shall classify the goods under sub-section (1), as far as may be, in accordance with the International classification of goods for the purposes of registration of geographical indications.

(3) The Registrar may publish in the prescribed manner an alphabetical index of classification of goods referred to in sub-section (2).

(4) Any question arising as to the class within which any goods fall or the definite area as referred to in sub-section (1) in respect of which the geographical indication is to be registered or where any goods are not specified in the alphabetical index of goods published under sub-section (3) shall be determined by the Registrar whose decision in the matter shall be final.

Prohibition of  
registration of  
certain  
geographical  
indications.

9. A geographical indication—

(a) the use of which would be likely to deceive or cause confusion; or

(b) the use of which would be contrary to any law for the time being in force; or

(c) which comprises or contains scandalous or obscene matter; or

(d) which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or

(e) which would otherwise be disentitled to protection in a court; or

(f) which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country; or

(g) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be,

shall not be registered as a geographical indication.

*Explanation 1.*—For the purposes of this section, “generic names or indications”, in relation to goods, means the name of a goods which, although relates to the place or the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the goods.

*Explanation 2.*—In determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods.

10. Subject to the provisions of section 7, a homonymous geographical indication may be registered under this Act, if the Registrar is satisfied, after considering the practical conditions under which the homonymous indication in question shall be differentiated from other homonymous indications and the need to ensure equitable treatment of the producers of the goods concerned, that the consumers of such goods shall not be confused or misled in consequence of such registration.

Registration of homonymous geographical indications.

### CHAPTER III

#### PROCEDURE FOR AND DURATION OF REGISTRATION

11. (1) Any association of persons or producers or any organisation or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication.

Application for registration.

(2) The application under sub-section (1) shall contain—

(a) a statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be;

(b) the class of goods to which the geographical indication shall apply;

(c) the geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured;

(d) the particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both;

(e) a statement containing such particulars of the producers of the concerned goods, if any, proposed to be initially registered with the registration of the geographical indication as may be prescribed; and

(f) such other particulars as may be prescribed.

(3) A single application may be made for registration of a geographical indication for different classes of goods and fee payable therefor shall be in respect of each such class of goods.

(4) Every application under sub-section (1) shall be filed in the office of the Geographical Indications Registry within whose territorial limits, the territory of the country or the region or locality in the country to which the geographical indication relates is situated:

Provided that where such territory, region or locality, as the case may be, is not situated in India, the application shall be filed in the office of the Geographical Indications Registry within whose territorial limits the place mentioned in the address for services in India as disclosed in the application, is situated.

(5) Every applications under sub-section (1) shall be examined by the Registrar in such manner as may be prescribed.

(6) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modification, conditions or limitations, if any, as he thinks fit.

(7) In the case of refusal or conditional acceptance of application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at his decision.

Withdrawal of acceptance.

12. Where, after the acceptance of an application for registration of a geographical indication but before its registration, the Registrar is satisfied,—

(a) that the application has been accepted in error, or

(b) that in the circumstances of the case the geographical indication should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted,

the Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted.

Advertisement of application.

13. (1) When an application for registration of a geographical indication has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions or limitations, if any, subject to which it has been accepted, to be advertised in such manner as may be prescribed.

(2) Where after advertisement of an application—

(a) an error in the application has been corrected; or

(b) the application has been permitted to be amended under section 15,

the Registrar may, in his discretion cause the application to be advertised again or instead of causing the application to be advertised again, notify in the prescribed manner, the correction made in the application.

Opposition to registration.

14. (1) Any person may, within three months from the date of advertisement or readvertisement of an application for registration or within such further period, not exceeding one month, in the aggregate, as the Registrar, on application made to him in such manner and on payment of such fee as may be prescribed allows, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration.

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall sent to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.



(3) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in such manner and within the such time as may be prescribed to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.

(5) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

(6) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceeding before him, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.

(7) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just.

15. The Registrar may, on such terms, as he thinks just, at any time, whether before or after acceptance of an application for registration under section 11, permit the correction of any error or in connection with the application or permit an amendment of the application:

Correction and amendment.

Provided that if an amendment is made to a single application referred to in subsection (3) of section 11 involving division of such application into two or more applications, the date of making of the initial application shall be deemed to be the date of making of the divided applications so divided.

16. (1) Subject to the provisions of section 12, when an application for registration of a geographical indication has been accepted and either—

Registration.

(a) the application has not been opposed and the time for notice of opposition has expired; or

(b) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall, unless the Central Government otherwise directs, register the said geographical indication and the authorised users, if any, mentioned in the application and the geographical indication and the authorised users when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of section 84, be deemed to be the date of registration.

(2) On the registration of a geographical indication, the Registrar shall issue each to the applicant and the authorised users, if registered with the geographical indication, a certificate in such form as may be prescribed of the registration thereof, sealed with the seal of the Geographical Indications Registry.

(3) Where registration of a geographical indication is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(4) The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

17. (1) Any person claiming to be the producer of the goods in respect of which a geographical indication has been registered under section 16 may apply in writing to the Registrar in the prescribed manner for registering him as an authorised user of such geographical indication.

Application for registration as authorised user.



(2) The application under sub-section (1) shall be accompanied by a statement and such documents of facts as may be prescribed and required by the Registrar to determine as to whether such person is the producer of the goods referred to in that sub-section and such fee as may be prescribed.

(3) The provisions of this Chapter relating to—

- (a) the filing and examination of the application;
- (b) the refusal and acceptance of registration;
- (c) withdrawal of acceptance of application;
- (d) advertisement of application;
- (e) opposition to registration;
- (f) correction or error in an amendment of the application; and
- (g) registration,

shall apply in respect of the application and registration of authorised users referred to in sub-section (1) in the same manner as they apply for the application for registration and registration of the geographical indication.

Duration,  
renewal,  
removal and  
restoration of  
registration.

18. (1) The registration of a geographical indication shall be for a period of ten years, but may be renewed from time to time in accordance with the provisions of this section.

(2) The registration of an authorised user shall be for a period of ten years or for the period till the date on which the registration of the geographical indication in respect of which the authorised user is registered expires, whichever is earlier.

(3) The Registrar shall, on application made in the prescribed manner, by the registered proprietor or by the authorised user and within the prescribed period and subject to the payment of the prescribed fee, renew the registration of the geographical indication or authorised user, as the case may be, for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as the expiration of the last registration).

(4) At the prescribed time before the expiration of the last registration of a geographical indication or the authorised user, as the case may be, the Registrar shall send notice in the prescribed manner to the registered proprietor or the authorised user, as the case may be, of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of time, prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the geographical indication or the authorised user, as the case may be, from the register:

Provided that the Registrar shall not remove the geographical indication or the authorised user, as the case may be, from the register, if an application is made in the prescribed form and the prescribed fee and surcharge is paid within six months from the expiration of the last registration of the geographical indication or the authorised user, as the case may be, and shall renew the registration of geographical indication or the authorised user, as the case may be, for a period of ten years under sub-section (3).

(5) Where a geographical indication or authorised user, as the case may be, has been removed from the register for non-payment of the prescribed fee, the Registrar shall, after six months and within one year from the expiration of the last registration of the geographical indication or the authorised user, as the case may be, on receipt of an application in the prescribed form and on payment of the prescribed fee, if satisfied that it is just so to do, restore the geographical indication or the authorised user, as the case

may be, to the register and renew registration of the geographical indication or authorised user, as the case may be, either generally or subject to such condition or limitation as he thinks fit to impose, for a period of ten years from the expiration of the last registration.

19. Where a geographical indication has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another geographical indication during one year, next after the date of removal, be deemed to be a geographical indication already on the register, unless the tribunal is satisfied either—

Effect of removal from register for failure to pay fee for renewal.

(a) that there has been no *bona fide* trade use of the geographical indication which has been removed within the two years immediately preceding its removal; or

(b) that no deception or confusion would be likely to arise from the use of the geographical indication which is the subject of the application for registration by reason of any previous use of the geographical indication which has been removed.

#### CHAPTER IV

##### EFFECT OF REGISTRATION

20. (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered geographical indication.

No action for infringement of unregistered geographical indication.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

21. (1) Subject to the other provisions of this Act, the registration of a geographical indication shall, if valid, give,—

Rights conferred by registration.

(a) to the registered proprietor of the geographical indication and the authorised user or users thereof the right to obtain relief in respect of infringement of the geographical indication in the manner provided by this Act;

(b) to the authorised user thereof the exclusive right to the use of the geographical indication in relation to the goods in respect of which the geographical indication is registered.

(2) The exclusive right to the use of a geographical indication given under clause (b) of sub-section (1) shall be subject to any condition and limitation to which the registration is subject.

(3) Where two or more persons are authorised users of geographical indications, which are identical with or nearly resemble each other, the exclusive right to the use of any of those geographical indications shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by anyone of those persons as against any other of those persons merely by registration of the geographical indications, but each of those persons has otherwise the same rights as against other persons as he would have if he were the sole authorised user.

22. (1) A registered geographical indication is infringed by a person who, not being an authorised user thereof,—

Infringement of registered geographical indications.

(a) uses such geographical indication by any means in the designations or presentation of goods that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which misleads the persons as to the geographical origin of such goods; or

(b) uses any geographical indication in such manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication.

*Explanation 1.*—For the purposes of this clause, “act of unfair competition” means any act of competition contrary to honest practices in industrial or commercial matters.

*Explanation 2.*—For the removal of doubts, it is hereby clarified that the following acts shall be deemed to be acts of unfair competition, namely:—

(i) all acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor;

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competitor;

(iii) geographical indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods;

(c) uses another geographical indication to the goods which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the persons that the goods originate in the territory, region or locality in respect of which such registered geographical indication relates.

(2) The Central Government may, if it thinks necessary so to do for providing additional protection to certain goods or classes of goods under sub-section (3), by notification in the Official Gazette, specify such goods or class or classes of goods, for the purposes of such protection.

(3) Any person who is not an authorised user of a geographical indication registered under this Act in respect of the goods or any class or classes of goods notified under sub-section (2), uses any other geographical indication to such goods or class or classes of goods not originating in the place indicated by such other geographical indication or uses such other geographical indication to such goods or class or classes of goods even indicating the true origin of such goods or uses such other geographical indication to such goods or class or classes of goods in translation of the true place of origin or accompanied by expression such as “kind”, “style”, “imitation” or the like expression, shall infringe such registered geographical indication.

(4) Notwithstanding anything contained in this section, where the goods in respect of which a geographical indication has been registered are lawfully acquired by a person other than the authorised user of such geographical indication, further dealings in those goods by such person including processing or packaging, shall not constitute an infringement of such geographical indication, except where the condition of goods is impaired after they have been put in the market.

Registration to be *prima facie* evidence of validity,

23. (1) In all legal proceedings relating to a geographical indication, the certificate of registration granted in this regard by the Registrar under this Act, being a copy of the entry in the register under the seal of the Geographical Indications Registry, shall be *prima facie* evidence of the validity thereof and be admissible in all courts and before the Appellate Board without further proof or production of the original.

(2) Nothing in this section shall be deemed to be affect the right of action in respect of an unregistered geographical indication.

Prohibition of assignment or transmission, etc.

24. Notwithstanding anything contained in any law for the time being in force, any right to a registered geographical indication shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement:

Provided that on the death of an authorised user his right in a registered geographical indication shall devolve on his successor in title under the law for the time being in force.



## CHAPTER V

## SPECIAL PROVISIONS RELATING TO TRADE MARKS AND PRIOR USERS

25. Notwithstanding anything contained in the Trade Marks Act, 1999, the Registrar of Trade Marks referred to in section 3 of that Act, shall, *suo motu* or at the request of an interested party, refuse or invalidate the registration of a trade mark which—

Prohibition of registration of geographical indication as trade mark.

(a) contains or consists of a geographical indication with respect to the goods or class or classes of goods not originating in the territory of a country, or a region or locality in that territory which such geographical indication indicates, if use of such geographical indications in the trade mark for such goods, is of such a nature as to confuse or mislead the persons as to the true place of origin of such goods or class or classes of goods;

(b) contains or consists of a geographical indication identifying goods or class or classes of goods notified under sub-section (2) of section 22.

26. (1) Where a trade mark contains or consists of a geographical indication and has been applied for or registered in good faith under the law relating to trade marks for the time being in force, or where rights to such trade mark have been acquired through use in good faith either—

Protection to certain trade marks.

(a) before the commencement of this Act; or

(b) before the date of filing the application for registration of such geographical indication under this Act,

nothing contained in this Act shall prejudice the registrability or the validity of the registration of such trade mark under the law relating to the trade marks for the time being in force, or the right to use such trade mark, on the ground that such trade mark is identical with or similar to such geographical indication.

(2) Nothing contained in this Act shall apply in respect of a geographical indication with respect to goods or class or classes of goods for which such geographical indication is identical with the term customary in common language as the common name of such goods in any part of India on or before the 1st day of January, 1995.

(3) Nothing contained in this Act shall in any way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to confuse or mislead the people.

(4) Notwithstanding anything contained in the Trade Marks Act, 1999 or in this Act, no action in connection with the use or registration of a trade mark shall be taken after the expiry of five years from the date on which such use or registration infringes any geographical indication registered under this Act has become known to the registered proprietor or authorised user registered in respect of such geographical indication under this Act or after the date of registration of the trade mark under the said Trade Marks Act subject to the condition that the trade mark has been published under the provisions of the said Trade Marks Act, 1999 or the rules made thereunder by that date, if such date is earlier than the date on which such infringement became known to such proprietor or authorised user and such geographical indication is not used or registered in bad faith.

## CHAPTER VI

## RECTIFICATION AND CORRECTION OF THE REGISTER

27. (1) On application made in the prescribed manner to the Appellate Board or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or varying the registration of a geographical indication or authorised user on the ground of any contravention, or failure to observe the condition entered on the register in relation thereto.

Power to cancel or vary registration and to rectify the register.



(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Appellate Board or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

(3) The tribunal may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(4) The tribunal, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Appellate Board rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

Correction of register.

28. The Registrar may, on application made in the prescribed manner by the registered proprietor or the authorised user,—

(a) correct any error in the name, address or description of the registered proprietor or the authorised user, as the case may be, of a geographical indication, or any other entry relating to the geographical indication on the register;

(b) enter any change in the name, address or description of the association of persons or of producers or any organisation or authority, as the case may be, who is registered as proprietor of a geographical indication on the register;

(c) cancel the entry of a geographical indication on the register;

(d) strike out any goods or class or classes of goods from those in respect of which a geographical indication is registered from the register,

and may make any consequential amendment or alteration in the certificate of registration, and for that purpose, may require the certificate of registration to be produced to him.

Alteration of registered geographical indications.

29. (1) The registered proprietor of a geographical indication may apply in the prescribed manner to the Registrar for leave to add to or alter the geographical indication in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of the opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the geographical indication as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

Adaptation of entries in register to amend or substitute classification of goods.

30. (1) The Registrar shall not make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a geographical indication is registered (whether in one or more classes) immediately before the amendment is to be made or antedating the registration of a geographical indication in respect of any goods:

Provided that this sub-section, shall not apply when the Registrar is satisfied that compliance therewith would involve complexity and that the addition or antedating, as

the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be brought to the notice of the registered proprietor and every authorised user of the geographical indication affected and advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

## CHAPTER VII

### APPEALS TO THE APPELLATE BOARD

31. (1) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder, may prefer an appeal to the Appellate Board within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

Appeals to the  
Appellate  
Board.

(2) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (1):

Provided that an appeal may be admitted after the expiry of the period specified therefor, if the appellant satisfies the Appellate Board that he had sufficient cause for not preferring the appeal within the specified period.

(3) An appeal to the Appellate Board shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and such fees as may be prescribed.

32. No court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-section (1) of section 31.

Bar of  
jurisdiction of  
courts, etc.  
Procedure of  
the Appellate  
Board.

33. The provisions of sub-sections (2), (3), (4), (5), (6) of section 84, section 87, section 92, section 95 and section 96 of the Trade Marks Act, 1999, shall apply to the Appellate Board in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Trade Marks Act, 1999.

34. (1) An application for rectification of the register made to the Appellate Board under section 27 shall be in such form as may be prescribed.

Procedure for  
application for  
rectification,  
etc., before  
Appellate  
Board.

(2) A certified copy of every order or judgment of the Appellate Board relating to a registered geographical indication under this Act shall be communicated to the Registrar by the Appellate Board and the Registrar shall give effect to the order of the Board and shall, when so directed, amend the entries in, or rectify, the register in accordance with such order.

35. (1) The Registrar shall have the right to appear and be heard—

Appearance of  
Registrar in  
legal  
proceedings.

(a) in any legal proceedings before the Appellate Board in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the Geographical Indications Registry is raised;

(b) in any appeal to the Board from an order of the Registrar on an application for registration of a geographical indication or authorised user—

(i) which is not opposed, and the application is either refused by the Registrar or is accepted by him subject to any amendments, modifications, conditions or limitations, or

(ii) which has been opposed and the Registrar considers that his appearance is necessary in the public interest,

and the Registrar shall appear in any case if so directed by the Board.

(2) Unless the Appellate Board otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him affecting it, or of the practice of the Geographical Indications Registry in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the proceeding.

Costs of Registrar in proceedings before Appellate Board.

36. In all proceedings under this Act before the Appellate Board the costs of the Registrar shall be in the discretion of the Board, but the Registrar shall not be ordered to pay the costs of any of the parties.

## CHAPTER VIII

### OFFENCES, PENALTIES AND PROCEDURE

Meaning of applying geographical indications.

37. (1) A person shall be deemed to apply a geographical indication to goods who—

- (a) applies it to the goods themselves; or
- (b) applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture; or
- (c) places, encloses or annexes any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, in or with any package or other thing to which a geographical indication has been applied; or
- (d) uses a geographical indication in any manner reasonably likely to lead to the belief that the goods in connection with which it is used are designated or described by that geographical indication; or
- (e) in relation to the goods uses a geographical indication in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial documents and goods are delivered to a person in pursuance of a request or order made by reference to the geographical indication as so used.

(2) A geographical indication shall be deemed to be applied to goods whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, the goods or to any package or other thing.

Falsifying and falsely applying geographical indications.

38. (1) A person shall be deemed to falsify a geographical indication who, either,—

(a) without the assent of the authorised user of the geographical indication makes that geographical indication or deceptively similar geographical indication; or

(b) falsifies any genuine geographical indication, whether by alteration, addition, effacement or otherwise.

(2) A person shall be deemed to falsely apply to goods a geographical indication who, without the assent of the authorised user of the geographical indication,—

(a) applies such geographical indication or a deceptively similar geographical indication to goods or any package containing goods;

(b) uses any package bearing a geographical indication which is identical with or deceptively similar to the geographical indication of such authorised user, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the authorised user of the geographical indication.

(3) Any geographical indication falsified as mentioned in sub-section (1) or falsely applied as mentioned in sub-section (2), is in this Act referred to as a false geographical indication.

(4) In any prosecution for falsifying a geographical indication or falsely applying a geographical indication to goods, the burden of proving the assent of proprietor shall lie on the accused.

39. Any person who,—

Penalty for applying false geographical indications.

- (a) falsifies any geographical indication; or
- (b) falsely applies to goods any geographical indication; or
- (c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a geographical indication; or
- (d) applies to any goods to which an indication of the country or place in which they were made or produced or the name and the address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 71, a false indication of such country, place, name or address; or
- (e) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 71; or
- (f) causes any of the things above-mentioned in this section to be done,

shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

40. Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things to which any false geographical indication is applied or which, being required under section 71 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or without the indications so required, shall, unless he proves,—

Penalty for selling goods to which false geographical indication is applied.

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the geographical indication or that any offence had been committed in respect of the goods; or

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things; or

(c) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

41. Whoever having already been convicted of an offence under section 39 or section 40 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Enhanced penalty on second or subsequent conviction.



Provided that the court may, for adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of this Act.

Penalty for  
falsely  
representing a  
geographical  
indication as  
registered.

42. (1) No person shall make any representation—

(a) with respect to a geographical indication, not being a registered geographical indication, to the effect that it is a registered geographical indication; or

(b) to the effect that a registered geographical indication is registered in respect of any goods in respect of which it is not in fact registered; or

(c) to the effect that registration of a geographical indication gives an exclusive right to the use thereof in any circumstances in which having regard to limitation entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) For the purposes of this section the use in India in relation to a geographical indication of the words "registered geographical indication" or any other expression, symbol or sign like "R.G.I." referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

(a) where that word or other expression, symbol or sign is used in direct association with other words delineated in characters at least as large as those in which that word or other expression, symbol or sign is delineated and indicating that the reference to registration as a geographical indication under the law of a country outside India being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a geographical indication registered under the law of a country outside India and in relation solely to goods to be exported to that country for use in that country.

Penalty for  
improperly  
describing a  
place of  
business as  
connected with  
the  
Geographical  
Indications  
Registry.

43. If any person uses on his place of business, or on any document issued by him, or otherwise, words which would reasonably lead to the belief that his place of business is, or is officially connected with, the Geographical Indications Registry, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for  
falsification of  
entries in the  
register.

44. If any person makes, or causes to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

No offence in  
certain cases.

45. The provisions of sections 39, 40 and 41 shall in relation to a registered geographical indication or authorised user of such geographical indication, be subject to the rights created or recognised by this Act and no act or omission shall be deemed to be an offence under the aforesaid sections if,—

(a) the alleged offence relates to a registered geographical indication and the act or omission is permitted under this Act; and

(b) the alleged offence relates to a registered geographical indication and the act or omission is permitted under any other law for the time being in force.

46. (1) Where a person is convicted of an offence under section 39 or section 40 or section 41 or is acquitted of an offence under section 39 or section 40 on proof that he acted without intent or defraud, or under section 40 on proof of the matters specified in clause (a) or clause (b) or clause (c) of that section, the court convicting or acquitting him may direct the forfeiture to Government of all goods and things by means of, or in relation to, which the offence has been committed, or but for such proof as aforesaid would have been committed. Forfeiture of goods.

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When, a forfeiture is directed on acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the court to which in appealable cases appeal lie from sentences of the court which directed the forfeiture.

(4) When a forfeiture is directed on a conviction, the court, before whom the person is convicted, may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

47. Where a person accused of an offence under section 39 proves,—

(a) that in the ordinary course of his business he is employed on behalf of other persons to apply geographical indications, or as the case may be, to make dies, blocks, machines, plates, or other instruments for making, or being used in making, geographical indications; Exemption of certain persons employed in ordinary course of business.

(b) that in the case which is the subject of the charge he was so employed, and was not interested in the goods or other thing by way of profit or commission depend on the sale of such goods;

(c) that, having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the geographical indication; and

(d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the geographical indication was applied,

he shall be acquitted.

48. (1) Where the offence charged under section 39 or section 40 or section 41 is in relation to a registered geographical indication and the accused pleads that the registration of the geographical indication is invalid, the following procedure shall be followed:— Procedure where invalidity of registration is pleaded by the accused.

(a) if the court is satisfied that such defence is *prima facie* tenable, it shall not proceed with the charge but shall adjourn the proceeding for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Appellate Board under this Act, for the rectification of the register on the ground that the registration is invalid;

(b) if the accused proves to the court that he has made such application within the time so limited or within such further time as the court may for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification;

(c) if within a period of three months or within such extended time as may be allowed by the court the accused fails to apply to the Appellate Board for rectification of the register, the court shall proceed with the case as if the registration were valid.

(2) Where before the institution of a complaint of an offence referred to in sub-section (1), any application for the rectification of the register concerning the geographical indication in question on the ground of invalidity of the registration thereof has already been properly made to and is pending before the tribunal, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification in so far as the complainant relies upon the registration of his geographical indication.

Offences by companies.

49. (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Cognizance of certain offences and the powers of police officer for search and seizure.

50. (1) No court shall take cognizance of an offence under section 42 or section 43 or section 44 except on complaint in writing made by the Registrar or any officer authorised by him in writing:

Provided that in relation to clause (b) of sub-section (1) of section 42, a court shall take a cognizance of an offence on the basis of a certificate issued by the Registrar to the effect that a registered geographical indication has been represented as registered in respect of any goods in respect of which it is not in fact registered.

(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try an offence under this Act.

(3) The offences under section 39 or section 40 or section 41 shall be cognizable.

(4) Any police officer not below the rank of deputy superintendent of police or equivalent, may, if he is satisfied that any of the offences referred to in sub-section (3) has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be:

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on the facts involved in the offence relating to geographical indication and shall abide by the opinion so obtained.

(5) Any person having an interest in any article seized under sub-section (4), may, within fifteen days of such seizure, make an application to the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, for such article being restored to him and the Magistrate, after hearing the application and the prosecution, shall make such order on the application as he may deem fit.



51. In any prosecution under this Act, the court may order such costs to be paid by the accused to the complainant, or by the complainant to the accused, as the court deemed reasonable having regard to all the circumstances of the case and the conduct of the parties and the costs so awarded shall be recoverable as if they were a fine.

Costs of  
defence of  
prosecution.

52. No prosecution for an offence under this Act shall be commenced after the expiration of three years next after the commission of the offence charged or two years after the discovery thereof by the prosecutor, whichever expiration first happens.

Limitation of  
prosecution.

53. An officer of the Government whose duty it is to take part in the enforcement of the provisions of this Chapter shall not be compelled in any court to say whence he got any information as to the commission of any offence against this Act:

Information as  
to commission  
of offence.

54. If any person, being within India, abets the commission, without India, of any act which, if committed in India, would, under this Act, be an offence, he may be tried for such abetment in any place in India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

Punishment  
for abetment  
in India of acts  
done out of  
India.

## CHAPTER IX

### MISCELLANEOUS

55. No suit or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Protection of  
action taken in  
good faith.

45 of 1860.

56. Every person appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Certain  
persons to be  
public servants.

57. (1) Where in any suit for infringement of a geographical indication the defendant pleads that registration of the geographical indication relating to plaintiff is invalid, the court trying the suit (hereinafter referred to as the court), shall,—

Stay of  
proceedings  
where the  
validity of  
registration of  
the  
geographical  
indication is  
questioned,  
etc.

(a) if any proceedings for rectification of the register to the geographical indication relating to plaintiff or defendant are pending before the Registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;

(b) if no such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the geographical indication relating to plaintiff or defendant is *prima facie* tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.

(2) If the party concerned proves to the court that he has made any such application as is referred to in clause (b) of sub-section (1) within the time specified therein or within such extended time as the court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.

(3) If no such application as aforesaid has been made within the time so specified or within such extended time as the court may allow, the issue as to the validity of the registration of the geographical indication concerned shall be deemed to have been abandoned and the court shall proceed with the suit in regard to the other issues in the case.

(4) The final order made in any rectification proceedings referred to in sub-section (1) or sub-section (2) shall be binding upon the parties and the court shall dispose of the suit conformably to such order in so far as it relates to the issue as to the validity of the registration of the geographical indication.



(5) The stay of a suit for the infringement of a geographical indication under this section shall not preclude the court from making any interlocutory order (including any order granting an injunction, directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit.

Application for  
rectification of  
register to be  
made to  
Appellate  
Board in  
certain cases.

58. (1) Where in a suit for infringement of a registered geographical indication the validity of the registration of the geographical indication relating to plaintiff is questioned by the defendant or where in any such suit the plaintiff questions the validity of the registration of the geographical indication relating to defendant, the issue as to the validity of the registration of the geographical indication concerned shall be determined only on an application for the rectification of the register and, notwithstanding anything contained in section 27, such application shall be made to the Appellate Board and not to the Registrar.

(2) Subject to the provisions of sub-section (1), where an application for rectification of the register is made to the Registrar under section 27, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the Appellate Board.

Implied  
warranty on  
sale of  
indicated  
goods.

59. Where a geographical indication has been applied to the goods on sale or in the contract for sale of any goods, the seller shall be deemed to warrant that the geographical indication is a genuine geographical indication and not falsely applied, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of goods on contract to and accepted by the buyer.

Powers of  
Registrar.

60. In all proceedings under this Act before the Registrar,—

(a) the Registrar shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(b) the Registrar may, subject to any rules made in this behalf under section 87, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a civil court;

(c) the Registrar may, on an application made in the prescribed manner, review his own decision.

Exercise of  
discretionary  
power by  
Registrar.

61. Subject to the provisions of section 64, the Registrar shall not exercise any discretionary or other power vested in him by this Act or the rules made thereunder adversely to a person applying for the exercise of that power without (if so required by that person within the prescribed time) giving to the person an opportunity of being heard.

Evidence  
before  
Registrar.

62. In any proceeding under this Act before the Registrar, evidence shall be given by affidavit:

Provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit.

Death of  
party to a  
proceeding.

63. If a person who is a party to a proceeding under this Act (not being a proceeding before the Appellate Board or a court) dies pending the proceeding, the Registrar may, on request, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without the substitution of his successor in interest.

Extension of  
time.

64. (1) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in the Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.

65. Where, in the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so, desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice.

Abandonment.

66. (1) No suit,—

(a) for the infringement of a registered geographical indication; or

(b) relating to any right in a registered geographical indication; or

(c) for passing off arising out of the use by the defendant of any geographical indication which is identical with or deceptively similar to the geographical indication relating to the plaintiff, whether registered or unregistered,

Suit for infringement, etc., to be instituted before district court.

shall be instituted in any court inferior to a district court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

5 of 1908

*Explanation.*—For the purposes of sub-section (2), "person" includes the registered proprietor and the authorised user.

67. (1) The relief which a court may grant in any suit for infringement or for passing off referred to in section 66 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or account of profits, together with or without any order for the delivery—up of the infringing labels and indications for destruction or erasure.

Relief in suit for infringement or for passing off.

(2) The order of injunction under sub-section (1) may include an *ex parte* injunction or any interlocutory order for any of the following matters, namely:—

(a) for discovery of documents;

(b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;

(c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

(3) Notwithstanding anything contained in sub-section (1), the court shall not grant relief by way of damages (other than nominal damages) on account of profits in any case—

(a) where in a suit for infringement the defendant satisfies the court—

(i) that at the time he commenced to use the geographical indication complained of in the suit he was unaware and had no reasonable ground for believing that the geographical indication of the plaintiff was on the register; and

(ii) that when he became aware of the existence and nature of the plaintiff's right in the geographical indication, he forthwith ceased to use the geographical indication in relation to good in respect of which it was registered; or

(b) where in a suit for passing off, the defendant satisfies the court—

(i) that at the time he commenced to use the geographical indication complained of in the suit he was unaware and had no reasonable ground for believing that the geographical indication relating to the plaintiff was in use; and

(ii) that when he became aware of the existence and nature of the geographical indication relating to the plaintiff he forthwith ceased to use the geographical indication complained of.

Authorised user to be impleaded in certain proceedings.

68. (1) In every proceeding under Chapter VI or under section 31, every authorised user of a geographical indication to which such proceeding relate, who is not himself an applicant in respect of any proceeding under that Chapter or section, shall be made a party to the proceeding.

(2) Notwithstanding anything contained in any other law, an authorised user so made a party to the proceeding shall not be liable for any costs unless he enters an appearance and takes part in the proceeding.

Evidence of entries in register, etc., and things done by the Registrar.

69. (1) A copy of any entry in the register or of any document referred to in sub-section (1) of section 78 purporting to be certified by the Registrar and sealed with the seal of the Geographical Indications Registry shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or things having been done or not done.

Registrar and other officers not compellable to produce register, etc.

70. The Registrar or any officer of the Geographical Indications Registry shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special cause.

Power to require goods to show indication of origin.

71. (1) The Central Government may, by notification in the Official Gazette, require that goods of any class specified in the notification which are made or produced beyond the limits of India and imported into India, or, which are made or produced within the limits of India, shall, from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an indication of the country or place in which they were made or produced, or of the name and address of the manufacturer or the person for whom the goods were manufactured.

(2) The notification may specify the manner in which such indication shall be applied, that is to say, whether to goods themselves or in any other manner, and the times or occasions on which the presence of the indication shall be necessary, that is to say, whether on importation only, or also at the time of sale, whether by wholesale or retail or both.

(3) No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interests of dealers in, or manufacturers, producers, or users of, the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, with or without such inquiry, as the Central Government may consider necessary.



10 of 1897.

(4) The provisions of section 23 of the General Clauses Act, 1897 shall apply to the issue of a notification under this section as they apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication.

(5) A notification under this section shall not apply to goods made or produced beyond the limits of India and imported into India, if in respect of those goods, the Commissioner of Customs is satisfied at the time of importation that they are intended for exportation whether after transshipment in or transit through India or otherwise.

72. If in any legal proceedings for rectification of the register before the Appellate Board a decision is on contest given in favour of the registered proprietor or, as the case may be, authorised user of the geographical indication on the issue as to the validity of the registration of the geographical indication or the authorised user, the Appellate Board may grant a certificate to that effect, and if such a certificate is granted, then, in any subsequent legal proceeding in which the said validity comes into question the said proprietor or the authorised user, as the case may be, on obtaining a final order or judgment in his favour affirming validity of the registration of the geographical indication or the authorised user, as the case may be, shall unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full cost charges and expenses as between legal practitioner and client.

Certificate of validity.

73. (1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding for infringement of a geographical indication which is registered, or alleged by the first-mentioned person to be registered, or with some other like proceeding, a person aggrieved may, whether the person making the threats is or is not the registered proprietor or the authorised user of the geographical indication, bring a suit against the first-mentioned person and may obtain a declaration to the effect that the threats are unjustifiable, and an injunction against the continuance of the threats and may recover such damages (if any) as he has sustained, unless the first-mentioned person satisfies the court that the geographical indication is registered and that the acts in respect of which the proceedings were threatened, constitute, or, if done, would constitute, an infringement of the geographical indication.

Groundless threats of legal proceedings.

(2) The last preceding sub-section does not apply if the registered proprietor of the geographical indication or an authorised user thereof with due diligence commences and prosecutes an action against the person threatened for infringement of the geographical indication.

(3) Nothing in this section shall render a legal practitioner or a registered geographical indications agent liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

(4) A suit under sub-section (1) shall not be instituted in any court inferior to a district court.

74. An address for service stated in an application or notice of opposition shall, for the purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case may be, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them by post to the address for service of the applicant or opponent, as the case may be.

Address for service.

75. In any proceeding relating to a geographical indication, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant geographical indication legitimately used by other persons.

Trade usages, etc., to be taken into consideration.

76. Where, by or under this Act, any act, other than the making of an affidavit, is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done instead of by that person himself, by a person duly authorised in the prescribed manner, who is,—

Agents.

(a) a legal practitioner, or



(b) a person registered in the prescribed manner as a geographical indications agent, or

(c) a person in the sole and regular employment of the principal.

Indexes.

77. There shall be kept under the directions and supervision of the Registrar,—

(a) an index of registered geographical indications,

(b) an index of geographical indications in respect of which applications for registration are pending,

(c) an index of the names of the proprietors of registered geographical indications, and

(d) an index of the names of authorised users.

Documents open to public inspection.

78. (1) The following documents, subject to such conditions as may be prescribed, be open to public inspection at the Geographical Indications Registry, namely:—

(a) the register and any document upon which any entry in the register is based;

(b) every notice of opposition to the registration of a geographical indication, application for rectification before the Registrar, counter-statement thereto, and any affidavit or document filed by the parties in any proceedings before the Registrar;

(c) the indexes mentioned in section 77; and

(d) such other documents as the Central Government may, by notification in the Official Gazette, specify:

Provided that where such register is maintained wholly or partly on computer, the inspection of such register under this section shall be made by inspecting the computer print out of the relevant entry in the register so maintained on computer.

(2) Any person may, on an application to the Registrar and on payment of such fee as may be prescribed, obtain a certified copy of any entry in the register or any document referred to in sub-section (1).

Reports of Registrar to be placed before Parliament.

79. The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution by or under this Act.

Fees and surcharge.

80. (1) There shall be paid in respect of applications and registrations and other matters under this Act such fees and surcharge as may be prescribed by the Central Government.

(2) Where a fee is payable in respect of the doing of an act by the Registrar, the Registrar shall not do that act until the fee has been paid.

(3) Where a fee is payable in respect of the filing of a document at the Geographical Indications Registry, the document shall be deemed not to have been filed at the registry until the fee has been paid.

Savings in respect of certain matters in Chapter VIII.

81. Nothing in Chapter VIII shall—

(a) exempt any person from any suit or other proceeding which might, but for anything in that Chapter, be brought against him; or

(b) be construed so as to render liable to any prosecution or punishment any servant of a master resident in India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

16 to 1908.

82. Notwithstanding anything contained in the Registration Act, 1908, no document declaring or purporting to declare any title of a person to a geographical indication other than a registered geographical indication shall be registered under that Act.

Declarations as to title of geographical indication not registrable under the Registration Act, 1908.

83. The provisions of this Act shall be binding on the Government.

Government to be bound.

84. (1) With a view to the fulfilment of a treaty, convention or arrangement with any country or a country which is a member of a group of countries or union of countries or Inter-Governmental Organisations outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country or group of countries or union of countries or Inter-Governmental Organisations to be a convention country or convention countries for the purposes of this Act.

Special provisions relating to applications for registration from citizens of convention countries.

(2) Nothing contained in this Act or the Trade Marks Act, 1999 shall prevent a continued and similar use of geographical indication relating to a country or a country which is a member of a group of countries or union of countries or any Inter-Governmental Organisations, as the case may be, notified under sub-section (1) identifying wines or spirits in connection with goods by any citizen or domiciliary of such country who has used that geographical indication in continuous manner with regard to such goods or any goods relating to such goods, as the case may be, in any part of the territory of that country either—

(a) for at least ten years preceding the 15th day of April, 1994; or

(b) in good faith preceding the date referred to in clause (a).

85. Where any country or a country which is a member of a group of countries or union of countries or any Inter-Governmental Organisation specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the registration and protection of geographical indications as it accords to its own nationals, no nationals of such country or a country which is a member of a group of countries or union of countries or Inter-Governmental Organisations, as the case may be, shall be entitled—

Provision as to reciprocity.

(a) to apply for the registration of, or be registered as the proprietor of geographical indication;

(b) to apply for registration or be registered as an authorised user of a geographical indication.

86. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Powers of Central Government to remove difficulties.

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

87. (1) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the provisions of this Act:

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the matters to be included in the Register of Geographical Indications under sub-section (1), and the safeguards to be observed in the maintenance of such register in computer floppies or diskettes under sub-section (2) of section 6;

(b) the manner of incorporation of particulars relating to registration of geographical indications in Part A under sub-section (2) and the manner of incorporation of particulars relating to the registration of the authorised users under sub-section (3) of section 7;

(c) the classification of goods and the manner of publication of the alphabetical index of classification of goods and the definite territory or locality or region for the purpose of registration of geographical indications under sub-section (1) of section 8;

(d) the form in which and the manner in which an application for registration of a geographical indication may be made and the fees which may accompany the application under sub-section (1) and the particulars to be made in the statement of producers of goods who proposes to be initially registered with the registration under clause (f) of sub-section (2) of section 11;

(e) the manner of publication of advertisement of accepted application, for registration of geographical indications, etc., under sub-section (1), and the manner of notifying the corrections or amendments made in the application under sub-section (2) of section 13;

(f) the manner in which and the fee which may accompany an application and the manner of giving notice under sub-section (1) and the manner of sending counter statement under sub-section (2) and the manner of submission of evidence and the time therefor under sub-section (4) of section 14;

(g) the form of certificate of registration under sub-section (2) and the manner of giving notice to the applicant under sub-section (3) of section 16;

(h) the manner of applying for registration as an authorised user under sub-section (1) and the manner of submitting statements and documents along with such application and the fee which may accompany such application under sub-section (2) of section 17;

(i) the manner of making application, the time within which such application is to be made and the fee payable with each application, under sub-section (3) and the time within which the Registrar shall send notice and the manner of such notice under sub-section (4) and the form in which and the fee which may accompany an application for renewal to be made under sub-section (5) of section 18;

(j) the manner of making applications under sub-sections (1) and (2), the manner of giving notice under sub-section (4) and the manner of service of notice of rectification under sub-section (5) of section 27;

(k) the manner of making an application for correction, etc., under section 28;

(l) the manner of making an application under sub-section (1), the manner of advertising an application under sub-section (1), the time and manner of notice by which an application may be opposed under sub-sections (2) and (3) of section 29;

(m) the manner of advertisement under sub-section (2) of section 30;

(n) the form of making an appeal, the manner of verification and the fee payable under sub-section (3) of section 31;

(o) the form in which an application for rectification shall be made, under sub-section (1) of section 34;

(p) the manner of making an application for review under clause (c) of section 60;

(q) the time within which an application is to be made to the Registrar for exercising his discretionary power under section 61;

(r) the manner of making an application and the fee payable therefore under sub-section (1) of section 64;

(s) the manner of authorising any person to act and the manner of registration of a geographical indications agent under section 76;

(t) the fee and surcharge payable for applications and registrations and other matters under sub-section (1) of section 80;

(u) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.





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## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar: 8th June, 2000.

No. : RP/34/2000/Act-49/99/E. - The following Act of Parliament is re-published for general information :-

#### GOVERNMENT OF INDIA MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, (Legislative Department)

New Delhi, the 30th December, 1999 / Pausa 9, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 30th December, 1999 and is hereby published for general information :-

#### THE COPYRIGHT (AMENDMENT) ACT, 1999.

(Act No. 49 of 1999)

(30th December, 1999)

#### AN ACT

*further to amend the Copyright Act, 1957.*

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright (Amendment) Act, 1999.

Short title and  
commence-  
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

14 of 1957.

2. In the Copyright Act, 1957 (hereinafter referred to as the principal Act), in section 2, in clause (o), for the words "data basis", the word "databases" shall be substituted.

Amendment of  
section 2.

Amendment of  
section 14.

3. In section 14 of the principal Act, in clause (b), for sub-clause (ii), the following shall be substituted, namely:—

“(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.”

Amendment of  
section 38.

4. In section 38 of the principal Act, in sub-section (2), for the words “twenty-five years”, the words “fifty years” shall be substituted.

Insertion of  
new section  
40A.

Power of  
Central  
Government  
to apply  
Chapter VIII  
to broadcast-  
ing organisa-  
tions and  
performers in  
certain other  
countries.

5. After section 40 of the principal Act, the following section shall be inserted, namely:—

“40A. (1) If the Central Government is satisfied that a foreign country (other than a country with which India has entered into a treaty or which is a party to a convention relating to rights of broadcasting organisations and performers to which India is also a party) has made or has undertaken to make such provisions, if any, as it appears to the Central Government expedient to require, for the protection in that foreign country, of the rights of broadcasting organisations and performers as is available under this Act, it may, by order published in the Official Gazette, direct that the provisions of Chapter VIII shall apply—

(a) to broadcasting organisations whose headquarters is situated in a country to which the order relates or, the broadcast was transmitted from a transmitter situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India;

(b) to performances that took place outside India to which the order relates in like manner as if they took place in India;

(c) to performances that are incorporated in a sound recording published in a country to which the order relates as if it were published in India;

(d) to performances not fixed on a sound recording broadcast by a broadcasting organisation the headquarters of which is located in a country to which the order relates or where the broadcast is transmitted from a transmitter which is situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India.

(2) Every order made under sub-section (1) may provide that—

(i) the provisions of Chapter VIII shall apply either generally or in relation to such class or classes of broadcasts or performances or such other class or classes of cases as may be specified in the order;

(ii) the term of the rights of broadcasting organisations and performers in India shall not exceed such term as is conferred by the law of the country to which the order relates;

(iii) the enjoyment of the rights conferred by Chapter VIII shall be subject to the accomplishment of such conditions and formalities, if any, as may be specified in that order;

(iv) Chapter VIII or any part thereof shall not apply to broadcast and performances made before the commencement of the order or that Chapter VIII or any part thereof shall not apply to broadcasts and performances broadcast or performed before the commencement of the order;

(v) in case of ownership of rights of broadcasting organisations and performers, the provisions of Chapter VIII shall apply with such exceptions and modifications as the Central Government may, having regard to the law of the foreign country, consider necessary."

6. After section 42 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 42A.

Power to restrict rights of foreign broadcasting organisations and performers.

"42A. If it appears to the Central Government that a foreign country does not give or has not undertaken to give adequate protection to rights of broadcasting organisations or performers, the Central Government may, by order published in the Official Gazette, direct that such of the provisions of this Act as confer right to broadcasting organisations or performers, as the case may be, shall not apply to broadcasting organisations or performers whereof are based or incorporated in such foreign country or are subjects or citizens of such foreign country and are not incorporated or domiciled in India, and thereupon those provisions shall not apply to such broadcasting organisations or performers."

7. In section 52 of the principal Act, in sub-section (1),—

Amendment of section 52.

(a) after clause (aa), the following clauses shall be inserted, namely:—

"(ab) the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;

(ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;

(ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;"

(b) in the proviso to clause (p), for the words "fifty years", the words "sixty years" shall be substituted.

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.

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Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 6th July, 2000.

No. : RP/12/2000/CONSTI-79/E : The following Act of Parliament is re-published for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,  
(Legislative Department)

New Delhi, the 21st January, 2000 / Magha 1, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 21st January, 2000 and is hereby published for general information :-

THE CONSTITUTION (SEVENTY-NINTH AMENDMENT) ACT, 1999

(21st January, 2000)

AN ACT

*further to amend the Constitution of India.*

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Seventy-ninth Amendment) Act, 1999.

Short title and  
commence-  
ment.

(2) It shall come into force on the 25th day of January, 2000.

2. In article 334 of the Constitution, for the words "fifty years", the words "sixty years" shall be substituted.

Amendment of  
article 334.

Dr. RAGHBIR SINGH,  
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Kum. H. K. JHAVERI,  
Secretary to Government.





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## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 4th October, 2000.

No. : RP/47/2000/ORD-3/2000/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 1st September, 2000 is republished for general information:—  
GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 1st September, 2000/Bhadra 10, 1922 (Saka)

#### THE INDIAN COUNCIL OF WORLD AFFAIRS ORDINANCE, 2000

No. 3 OF 2000

Promulgated by the President in the Fifty-first Year of the Republic of India.

An Ordinance to declare the Indian Council of World Affairs to be an institution of national importance and to provide for its incorporation and matters connected therewith.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Indian Council of World Affairs Ordinance, 2000.

Short title and  
commence-  
ment.

(2) It shall come into force at once.

2. Whereas the objects of the Indian Council of World Affairs, a society registered under the Societies Registration Act, 1860 are such as to make the institution one of national importance, it is hereby declared that the institution, known as the Indian Council of World Affairs, is an institution of national importance.

Declaration of  
the Indian  
Council of  
World Affairs  
as institution  
of national  
importance.

3. In this Ordinance, unless the context otherwise requires,—

(a) "appointed day" means the date of commencement of this Ordinance;

Definitions.

- (b) "Chairperson" means the Chairperson of the Governing Body;
- (c) "Council" means the Indian Council of World Affairs incorporated under section 4;
- (d) "Director-General" means the Director-General of the Council;
- (e) "existing Council" means the Indian Council of World Affairs, a society registered under the Societies Registration Act, 1860 and functioning as such immediately before the appointed day; 21 of 1860.
- (f) "Fund" means the Fund of the Council referred to in section 18;
- (g) "Governing Body" means the Governing Body of the Council;
- (h) "member" means a member of the Council and includes the President and Vice-President;
- (i) "President" means the President of the Council;
- (j) "regulations" means regulations made under this Ordinance;
- (k) "rules" means rules made under this Ordinance;
- (l) "Vice-President" means the Vice-President of the Council.

Incorporation  
of the Council.

4. (1) The Indian Council of World Affairs is hereby constituted a body corporate by the name of the Indian Council of World Affairs and as such body corporate it shall have perpetual succession and a common seal with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property, both movable and immovable; and to contract and shall by that name sue and be sued.

(2) The head office of the Council shall be at Delhi and the Council may, with the previous approval of the Central Government, establish branches at other places in India.

Transfer of  
assets and  
liabilities of the  
existing  
Council to the  
Council.

5. (1) On and from the appointed day,—

(a) all properties and other assets vested in the existing Council immediately before that day, shall vest in the Council;

(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing Council immediately before that day for or in connection with the purposes of the existing Council, shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Council;

(c) all sums of money due to the existing Council, immediately before that day, shall be deemed to be due to the Council;

(d) all suits and other legal proceedings instituted or which could have been instituted by or against the existing council, immediately before that day, may be continued or instituted by or against the Council; and

(e) every employee holding any office under the existing Council immediately before that day, shall, on that day, hold his office or service under the Council with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting; and shall continue to do so unless and until his employment under the Council is duly terminated or until his remuneration and other conditions of service are duly altered by the Council.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the absorption of any employee by the Council in its regular service under this section shall not entitle such employee to any compensation under that Act or any other law and no such claim shall be entertained by any court, tribunal or other authority.

6. (1) Every person having possession, custody or control of property forming part of the properties and other assets referred to in clause (a) of sub-section (1) of section 5 shall deliver forthwith such property to the Director General.

Obligation to transfer property or assets.

(2) Any person incharge of the property and other assets of the existing Council immediately before the commencement of this Ordinance shall, within ten days from that day, furnish to the Director General a complete inventory of all properties and assets (including particulars of book debts and investments and belongings) immediately before the commencement of this Ordinance and also of all agreements entered into by the existing Council or any person on its behalf.

7. (1) The Council shall consist of the following members, namely:—

Composition of the Council.

(a) the Union Minister for External Affairs who shall be the President, ex-officio;

(b) a Vice-President, who shall be elected by the Council from amongst its members;

(c) a Director-General, who shall be appointed by the Central Government;

(d) three members to be nominated by the Central Government who are distinguished in the field of diplomacy, international affairs and law;

(e) four members to be nominated by the Central Government from amongst experts in the fields of history, economics, security studies and social sciences;

(f) two members to be nominated by the Central Government from amongst the Vice-Chancellors of Universities;

(g) four members to be nominated by the Council.

(2) It is hereby declared that the office of the member of the Council shall not disqualify its holder for being chosen as, or for being, a Member of either House of Parliament.

(3) A person shall be disqualified for being nominated as a member if he—

(a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court.

8. (1) Save as otherwise provided in this section, the term of office of a member shall be three years from the date of his nomination.

Term of office and vacancies among members.

(2) The term of office of the member nominated to fill a casual vacancy shall continue for remainder of the term of the member in whose place he is nominated.

(3) A member shall, unless the Central Government otherwise directs, continue in office until another person is nominated as a member in his place.

(4) The Central Government shall remove a member if he—

(a) becomes subject to any of the disqualifications mentioned in sub-section

(3) of section 7, or

(b) refuses to act or becomes incapable of acting; or

(c) is, without obtaining leave of absence from the Council, absent from three consecutive meetings of the Council; or

(d) in the opinion of the Central Government, has so abused his position as to render his continuance in office detrimental to the public interest:

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

(5) A member shall, unless disqualified under sub-section (3) of section 7, be eligible for re-nomination.

(6) A member may resign his office by writing under his hand addressed to the Central Government but shall continue in his office until his resignation is accepted by that Government.

(7) The manner of filling vacancies among members shall be such as may be prescribed by rules.

9. The President shall exercise such powers and discharge such functions as are laid down in this Ordinance or as may be prescribed by rules.

10. The Vice-President shall exercise such of the powers and perform such of the functions of the President as may be prescribed by rules or as may be delegated to him by the President.

11. Members shall receive such allowances, if any, from the Council as may be prescribed by rules.

12. The Council shall hold its first meeting at such time and place as may be appointed by the Central Government and shall observe such rules of procedure in regard to the transaction of business at the first meeting as may be laid down by that Government; and thereafter the Council shall meet at such times and places and observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by regulations.

13. The objects of the Council shall be—

(a) to promote the study of Indian and international affairs so as to develop a body of informed opinion on international matters;

(b) to promote India's relations with other countries through study, research, discussion, lectures, exchange of ideas and information with other organisations within and outside India engaged in similar activities;

(c) to serve as a clearing house of information and knowledge regarding world affairs;

(d) to publish books, periodicals, journals, reviews, papers, pamphlets and other literature on subjects covered under clauses (a) and (b);

(e) to establish contacts with organisations promoting objects mentioned in this section;

(f) to arrange conferences and seminars to discuss and study the Indian policy towards international affairs; and

(g) to undertake such other activities for the promotion of ideas and attainment of the above-mentioned objects.

14. (1) There shall be a Governing Body of the Council which shall be constituted by the Council from amongst the members in such manner as may be prescribed by regulations.

(2) The Governing Body shall be the executive committee of the Council and shall exercise such powers and discharge such functions as the Council may, by regulations made in this behalf, confer or impose upon it.

(3) The President shall be the Chairperson of the Governing Body and as Chairperson thereof shall exercise such powers and discharge such functions as may be prescribed by regulations.

Powers and functions of President.

Power and functions of the Vice-President.

Allowances of members.

Meetings of Council.

Objects of Council.

Governing Body and other committees of Council.



(4) The procedure to be followed by the Governing Body in the exercise of its powers and discharge of its functions and the term of office of, and the manner of filling vacancies among the members of, the Governing Body, shall be such as may be prescribed by regulations.

(5) Subject to such control and restrictions as may be prescribed by rules, the Council may constitute as many standing committee and as many ad hoc committees as it thinks fit for exercising any power of discharging any function of the Council or for inquiring into, or reporting or advising upon, any matter which the Council may refer to them.

(6) The Chairperson and members of the Governing Body or a standing Committee or an ad hoc committee shall receive such allowances as may be prescribed by regulations.

15. (1) There shall be a chief executive officer of the Council who shall be designated as the Director-General and shall be appointed by the Ministry of External Affairs.

Staff of  
Council.

(2) The Director-General shall act as the Secretary to the Council as well as to the Governing Body.

(3) The Director-General shall exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Council or the President or the Governing Body or the Chairperson.

(4) The Financial Advisor of the Ministry of External Affairs shall be the Financial Advisor of the Council.

(5) Subject to such rules as may be made in this behalf, the Council may appoint such number of other officers and employees as may be necessary for the exercise of its powers and efficient discharge of its functions and may determine the designations and grades of such other officers and employees.

(6) Subject to such rules as may be made in this behalf, the Director-General and other officers and employees of the Council shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, gratuity, provident fund and other matters, as may be prescribed by regulations made in this behalf.

16. The Council shall undertake various plans to promote, organise and implement various programmes for efficiently achieving the objects of the Council specified in section 13 and shall also perform such other functions as the Central Government may, by rules, prescribe.

Functions of  
Council.

17. The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Council in each financial year such sums as may be considered necessary for the exercise of powers and efficient discharge of functions of the Council under this Ordinance.

Payment to  
Council.

18. (1) The Council shall maintain a Fund to which shall be credited—

Fund of  
Council.

(a) all moneys received from the Central Government;

(b) all moneys received by the Council by way of grants, gifts, donations, benefactions, bequests or transfers; and

(c) all moneys received by the Council in any other manner or from any other source.

(2) All moneys credited to the Fund shall be deposited in such banks or invested in such manner as the Council may, subject to the approval of the Central Government, decide.

(3) The Fund shall be applied towards meeting the administrative and other expenses of the Council, including expenses incurred in the exercise of its powers and discharge of its functions under section 16 or in relation to any of the activities referred to therein or for anything relatable thereto.

Budget of  
Council.

19. The Council shall prepare, in such form and at such time every year, as may be prescribed by rules, a budget in respect of the financial year next ensuing, showing the estimated receipts and expenditure of the Council and shall forward to the Central Government such number of copies thereof as may be prescribed by rules.

Accounts and  
audit.

20. (1) The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance-sheet in such form as the Central Government may, by rules, prescribe and in accordance with such general direction as may be issued by that Government, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office or offices of the Council.

(4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Annual  
Report.

21. The Council shall prepare every year, in such form and at such time as may be prescribed by rules, an annual report giving a true and full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Authentication  
of orders and  
instruments of  
Council.

22. All orders and decisions of the Council shall be authenticated by the signature of the President or the Vice-President and all other instruments issued by the Council shall be authenticated by the signature of the Director-General or any other officer of the Council authorised by the Council in this behalf.

Vacancy, etc.,  
not to  
invalidate  
proceedings of  
the Council,  
etc.

23. No act or proceeding of the Council, Government Body or any standing or ad hoc committee under this Ordinance shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Council; or

(b) any defect in the appointment of a person acting as a member of the Council;

or

(c) any irregularity in the procedure of the Council not affecting the merits of the case.

Reports,  
returns and  
information.  
Penalties.

24. The Council shall furnish to the Central Government such reports, returns and other information as that Government may require from time to time.

25. Any person who—

(a) having in his possession or custody or his control any property vested in the existing Council, wrongfully withholds such property from the Director General;  
or

(b) fails to deliver any property or any other assets or removes or destroys it;

(c) wilfully withholds or fails to account for any books, papers or other documents which may be in his possession or custody or under his control to the Director General;

shall be punishable with imprisonment for a term which may be extended to two years, or with fine which may extend to ten thousand rupees, or with both.

26. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Ordinance.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matter, namely:—

(a) the manner of filling vacancies among members under sub-section (7) of section 8;

(b) the powers and functions to be exercised and discharged by the President and the Vice-President under section 9 and section 10, as the case may be;

(c) the allowances to be paid to the members under section 11;

(d) the control and restrictions in relation to the constitution of standing and ad-hoc committees under sub-section (5) of section 14;

(e) the filling up of vacancies under sub-section — section (7) of section 14;

(f) the number of other officers and employees that may be appointed by the Council and the manner of such appointment under sub-section (5) of section 15;

(g) the salaries and allowances and other conditions of service of the Director and other officers and employees of the Council under sub-section (6) of section 15;

(h) the other functions to be performed by the Council under section 16;

(i) the form in which, and the time at which, the budget shall be prepared by the Council and the number of copies thereof to be forwarded to the Central Government under section 19;

(j) the form in which an annual statement of accounts including the balance-sheet shall be prepared by the Council under sub-section (1) of section 20;

(k) the form in which and the time at which the report of the activities of the Council shall be submitted to the Central Government under section 21;

(l) any other matter which has to be or may be prescribed by rules.

27. (1) The Council may, with the previous approval of the Central Government, make regulations consistent with the provisions of this Ordinance and the rules to carry out the purposes of this Ordinance.

Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:—

(a) the summoning and holding of meetings, other than the first meeting of the Council, the time and place where such meetings are to be held and the transaction of business at such meetings under section 12.

(b) the manner in which the Governing Council shall be constituted under sub-section — section (1) of section 14.

(c) the powers and functions to be exercised and discharged by the Governing Body and the Chairperson under sub-sections (2) and (3) of section 14;

(d) the procedure to be followed by the Governing Body in exercise of its powers and discharge of its functions and the term of office of, and the manner of filling vacancies among, the members of the Governing Body under sub-section (4) of section 14.

(e) the allowances to be paid to the members of the standing and *ad hoc* committees under sub-section (6) of section 14.

(f) the powers and functions to be exercised and discharged by the Director-General under sub-section (3) of section 15.

(g) any other matter which has to be or may be prescribed by regulations.

(3) Notwithstanding anything contained in sub-section (1), the first regulations under this Ordinance shall be made by the Central Government and any regulations so made may be altered or rescinded by the Council in exercise of its powers under sub-section (1).

Rules and regulations to be laid before Parliament.

28. Every rule and every regulation made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to remove difficulties.

29. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Sd/-

K. R. NARAYANAN,  
*President.*

SUBHASH C. JAIN,  
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

B. L. MEHTA,  
Secretary to Government.





सत्यमेव जयते

# The Gujarat Government Gazette EXTRAORDINARY

PUBLISHED BY AUTHORITY

VOL. XLI] MONDAY, DECEMBER 4, 2000 / AGRAHAYANA 13, 1922

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 1st December, 2000.

No. : RP/52/2000/Ord-5/2000/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 1st November, 2000 is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 1st November, 2000/Kartika 10, 1922 (Saka)

#### THE CENTRAL ROAD FUND ORDINANCE, 2000

No. 5 OF 2000.

Promulgated by the President in the Fifty-first Year of the Republic of India

*An Ordinance to give statutory status to the existing Central Road Fund governed by the Resolution of Parliament passed in 1988, for development and maintenance of national highways and improvement of safety at railway crossings, and for these purposes to levy and collect by way of cess; a duty of excise and duty of customs on motor spirit commonly known as petrol, high speed diesel oil and for other matters connected therewith.*

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

#### CHAPTER I

##### PRELIMINARY

1. (1) This Ordinance may be called the Central Road Fund Ordinance, 2000.

(2) It extends to the whole of India.

(3) Save as otherwise provided in this Ordinance, it shall come into force at once.

Short title,  
extent and  
commence-  
ment.

## Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(a) "appointed day" means the date on which the Fund is established under sub-section (1) of section 6;

(b) "cess" means a duty in the nature of duty of excise and customs, imposed and collected on motor spirit commonly known as petrol and high speed diesel oil for the purposes of this Ordinance;

(c) "Fund" means the Central Road Fund established under sub-section (1) of section 6;

(d) "national highways" means the highways specified in the Schedule to the National Highways Act, 1956 or any other highway declared as national highway under sub-section (2) of section 2 of the said Act;

48 of 1956.

(e) "National Highways Authority of India" means an authority constituted under sub-section (1) of section 3 of the National Highways Authority of India Act, 1988;

68 of 1988.

(f) "prescribed" means prescribed by rules made under this Ordinance.

## CHAPTER II

## CENTRAL ROAD FUND

## Levy and collection of cess.

3. (1) With effect from such date as the Central Government may, by notification in Official Gazette, specify, there shall be levied and collected, as a cess, a duty of excise and customs for the purposes of this Ordinance, on every item specified in column (2) of the Schedule, which is produced in or imported into India and—

(a) removed from a refinery or a factory or an outlet; or

(b) transferred by the person, by whom such item is produced or imported, to another person,

at such rates not exceeding the rate set forth in the corresponding entry in column (3) of the Schedule, as the Central Government may, by notification in the Official Gazette, specify:

Provided that until the Central Government specifies by such notification the rate of the cess in respect of petrol and high speed diesel oil (being items specified in the Schedule), the cess on petrol and high speed diesel oil under this sub-section shall be levied and collected at the rate of rupee one per litre:

Provided further that the additional duty of customs and the additional duty of excise on petrol levied under sub-section (1) of section 103 and sub-section (1) of section 111, as the case may be, of the Finance (No. 2) Act, 1998 and the additional duty of customs and the additional duty of excise on high speed diesel oil levied under sub-section (1) of section 116 and sub-section (1) of section 133, as the case may be, of the Finance Act, 1999 shall be deemed to be a cess for the purposes of this Ordinance from the date of its levy and the proceeds thereof shall be credited to the Fund.

21 of 1998.

27 of 1999.

(2) Every cess leviable under sub-section (1) on any item shall be payable by the person by whom such item is produced, and in the case of imports, the cess shall be imposed and collected on items so imported and specified in the Schedule.

(3) The cess leviable under sub-section (1) on the items specified in the Schedule shall be in addition to any cess or duty leviable on those items under any other law for the time being in force.

(4) The provisions of the Central Excise Act, 1944 and the rules made thereunder and the provisions of the Customs Act, 1962 and the rules made thereunder, as the case may be, including those relating to refunds and exemptions from duties shall, as far as may be, apply in relation to the levy and collection of cess leviable under this section and for this purpose, the provisions of the Central Excise Act, 1944 and of the Customs Act, 1962 as the case may be, shall have effect as if the aforesaid Acts provided for the levy of cess on all items specified in the Schedule.

1 of 1944.

52 of 1962.

4. The proceeds of the cess levied under section 3 shall first be credited to the Consolidated Fund of India, and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, credit such proceeds to the Fund from time to time, after deducting the expenses of collection, for being utilised exclusively for the purposes of this Ordinance.

Crediting of  
Cess to  
Consolidated  
Fund of India.

5. The Central Government may, after due appropriation made by Parliament by law in this behalf, credit by way of grants or loans such sums of money as the Central Government may consider necessary in the Fund.

Grants and  
Loans by the  
Central  
Government.

6. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the purposes of this Ordinance, a Fund to be called as the "Central Road Fund".

Establishment  
of Central  
Road Fund.

(2) The Fund shall be under the control of the Central Government and there shall be credited thereto—

(a) any sums of money paid under section 4 or section 5;

(b) unspent part of the cess, being already levied for the purposes of the development and maintenance of national highways;

(c) the sums, if any, realised by the Central Government in carrying out its functions or in the administration of this ordinance;

(d) any fund provided by the Central Government for the development and maintenance of State roads;

(3) The balance to the credit of the Fund shall not lapse at the end of the financial year.

7. The Fund shall be utilised for the—

(i) development and maintenance of national highways;

(ii) development of the rural roads;

(iii) development and maintenance of other State roads including roads of inter-State and economic importance;

(iv) construction of roads either under or over the railways by means of a bridge and erection of safety works at unmanned rail-road crossings; and

(v) disbursement in respect of such projects as may be prescribed.

Utilisation of  
the Fund.

8. (1) The concerned departments of the Central Government shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the profit and loss account and the balance-sheet in respect of allocations of their shares of fund in such form, as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and  
audit.

(2) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.

### CHAPTER III

#### MANAGEMENT OF CENTRAL ROAD FUND

9. (1) The Central Government shall have the power to administer the Fund and shall—

(a) take such decisions regarding investment on projects of national highways and expressways as it considers necessary;

(b) take such measures as may be necessary to raise funds for the development and maintenance of the national highways;

Powers of  
Central  
Government  
to Administer  
the Fund.

(c) allocate and disburse such sums as are considered necessary, to the concerned departments responsible for the development and maintenance of—

(i) national highways;

(ii) rural roads;

(iii) State roads; and

(iv) construction of roads either under or over the railways by means of a bridge and erect suitable safety works at unmanned rail-road level crossings.

Functions of  
the Central  
Government.

10. The Central Government shall be responsible for the —

(i) administration and management of the share of Fund allocated to the development and maintenance of the national highways;

(ii) co-ordination and complete and timely utilization of all sums allocated out of the Fund;

(iii) sanction of schemes for State roads of inter-State and economic importance in such manner as may be prescribed;

(iv) formulation of criteria on the basis of which the specific projects of State roads of inter-State and economic importance are to be approved and financed out of share of State roads;

(v) release of funds to the States for specific projects and monitoring of such projects and expenditure incurred thereon;

(vi) formulation of the criteria for allocation of the funds for such projects which are required to be implemented by the National Highways Authority of India and also for other projects for the development and maintenance of the national highways;

(vii) allocation of share of funds to each State and Union territory specified in the First Schedule to the Constitution;

(viii) allocation of —

(a) fifty per cent of the cess on high speed diesel oil for the development of rural roads in such manner as may be prescribed; and

(b) the balance amount of fifty per cent of cess on high speed diesel oil and the entire cess collected on petrol as follows:—

(i) an amount equal to fifty seven and one half per cent of such sum for the development and maintenance of national highways;

(ii) an amount equal to twelve and one half per cent for the construction of road either under or over the railways by means of a bridge and erection of safety works at unmanned rail-road crossings; and

(iii) the balance thirty per cent. on development and maintenance of roads other than national highways and out of this amount, ten per cent. that is three per cent of the total share of State roads shall be kept as reserve by the Central Government for allocation to states for implementation of State road schemes of inter-State and economic importance to be approved by the Central Government in terms of clauses (iii) and (iv) of this section.

Administra-  
tion of States'  
share of the  
Fund.

11. (1) The share of the fund to be spent on development and maintenance of roads, other than national highways, as specified under sub-clause (b) of clause (viii) of section 10, after deducting the reserve kept by the Central Government for State road schemes of inter-State and economic importance, shall be allocated to various States and Union territories in such manner as may be decided by the Central Government.



(2) The portion of the fund allocated for expenditure in the various States and Union territories shall be retained by the Central Government until it is actually required for expenditure.

(3) If in the opinion of the Central Government, the Government of any State or the administration of any Union territory has at any time—

(a) failed to take such steps as the Central Government may recommend for the regulation and control of motor vehicles within the State or the Union territory; or

(b) delayed without reasonable cause the application of any portion of the fund allocated or re-allocated, as the case may be, for expenditure within the State or Union territory,

the Central Government may resume the whole or part of any sums which it may have at that time held for expenditure in that State or the Union territory.

(4) All sums resumed by the Central Government from the account of any State Government or Union territory administration as aforesaid shall be re-allocated between the credit accounts of the defaulting and other State Governments and Union territory administrations in the ratio of the main allocation for the financial year preceding the year in which the re-allocation is made.

(5) The balance to the credit of the Fund in respect of any allocation shall not lapse at the end of the financial year.

12. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) specify the projects in respect of which the funds may be disbursed under section 7;

(b) the manner in which the accounts shall be maintained and the annual statement of accounts may be prepared including the profit and loss account and the balance sheet under sub-section (1) of section 8;

(c) the manner in which the schemes for development and maintenance of State roads of inter-State and economic importance are to be formulated and sanctioned under section 10;

(d) any other matter for which rule is to be made, or may be, prescribed.

13. Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Rules made under this Ordinance to be laid before Parliament.

14. With effect from the appointed day the Central Road Fund governed by the Parliamentary Resolution dated the 13th May, 1988 (hereafter referred to in this section as the existing Fund) shall be deemed to be the Fund established under this Ordinance and,—

Provisions relating to existing Central Road Fund.

(a) all schemes relating to development and maintenance of national highways and State roads sanctioned under the existing Fund in so far as such schemes are relatable to the schemes under this Ordinance, shall be deemed to be the schemes sanctioned under this Ordinance;

(b) all funds accrued under the existing Fund including assets and liabilities shall be transferred to the Fund established under this Ordinance.

## THE SCHEDULE

(See section 3)

Sl. No	Name of item	Rate of duty
(1)	(2)	(3)
1	Motor spirit commonly known as petrol	Rupee one per litre
2	High speed diesel oil	Rupees one per litre

Sd/-

K. R. NARAYANAN,  
*President.*

SUBHASH C. JAIN,  
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

B. L. MEHTA,  
*Secretary to Government.*

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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# The Gujarat Government Gazette

## EXTRAORDINARY

PUBLISHED BY AUTHORITY

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### PART - VI

#### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 16th December, 2000.

No. : RP/55/2000/Act-2/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

#### (Legislative Department)

New Delhi, the 27th March, 2000/Chaitra 7, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 25th March, 2000, and is hereby published for general information:—

#### THE TELECOM REGULATORY AUTHORITY OF INDIA (AMENDMENT) ACT, 2000

(ACT No. 2 OF 2000)

(25th March, 2000.)

#### An Act to amend the Telecom Regulatory Authority of India Act, 1997.

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Telecom Regulatory Authority of India (Amendment) Act, 2000.

Short title and  
commencement.

(2) It shall be deemed to have come into force on the 24th day of January, 2000.

24 of 1997.

2. In the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the principal Act), in the long title, for the words "Telecom Regulatory Authority of India to regulate the telecommunication services," the words "Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector" shall be substituted.

Amendment of  
long title.

Amendment of  
section 2.

3. In section 2 of the principal Act,—

(a) after clause (a), the following clause shall be inserted, namely:—

“(aa) “Appellate Tribunal” means the Telecom Disputes Settlement and Appellate Tribunal established under section 14;”;

(b) after clause (e), the following clause shall be inserted, namely:—

“(ea) “licensor” means the Central Government or the telegraph authority who grants a licence under section 4 of the Indian Telegraph Act, 1885;”;

13 of 1885.

(c) in clause (j), for the word “Government”, the words “Government as a service provider” shall be substituted;

(d) in clause (k), the following proviso shall be inserted, namely:—

“Provided that the Central Government may notify other service to be telecommunication service including broadcasting services.”.

Amendment of  
section 3.

4. In section 3 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The Authority shall consist of a Chairperson, and not more than two whole-time members and not more than two part-time members, to be appointed by the Central Government.”.

Substitution of  
new section for  
section 4.

Qualifications  
for appointment  
of Chairperson  
and other  
members.

5. For section 4 of the principal Act, the following section shall be substituted, namely:—

“4. The Chairperson and other members of the Authority shall be appointed by the Central Government from amongst persons who have special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management or consumer affairs:

Provided that a person who is, or has been, in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than three years.”.

Amendment of  
section 5.

6. In section 5 of the principal Act,—

(a) for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

“(2) The Chairperson and other members shall hold office for a term not exceeding three years, as the Central Government may notify in this behalf, from the date on which they enter upon their offices or until they attain the age of sixty-five years, whichever is earlier.

(3) On the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, a person appointed as Chairperson of the Authority and every other person appointed as member and holding office as such immediately before such commencement shall vacate their respective offices and such Chairperson and such other members shall be entitled to claim compensation not exceeding three months pay and allowances for the premature termination of the term of their offices or of any contract of service.”;

(b) in sub-section (4),—

(i) for the words “selection as member”, the words “selection as the Chairperson or whole-time member” shall be substituted;

(ii) for the words “joining as member”, the words “joining as the Chairperson or a whole-time member, as the case may be” shall be substituted;

(c) in sub-section (5), for the words “other members”, the words “whole-time members” shall be substituted;



(d) after sub-section (6), the following sub-section shall be inserted, namely:—

“(6A) The part-time members shall receive such allowances as may be prescribed.”;

(e) in sub-section (7), the words, brackets and figure “or sub-section (3)” shall be omitted;

(f) in sub-section (8),—

(i) in the opening portion, for the words “other member”, the words “whole-time member” shall be substituted;

(ii) in clause (b), for the words “two years”, the words “one year” shall be substituted;

(iii) after clause (b), the following proviso shall be inserted, namely:—

“Provided that nothing contained in this sub-section shall apply to the Chairperson or a member who has ceased to hold office under sub-section (3) and such Chairperson or member shall be eligible for re-appointment in the Authority or appointment in the Appellate Tribunal.”

7. In section 7 of the principal Act, for sub-sections (2) and (3), the following sub-section shall be substituted, namely:—

Amendment of section 7.

“(2) No such member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.”

8. In section 10 of the principal Act, in sub-section (2),—

Amendment of section 10.

(a) for the words “determined by regulations”, the word “prescribed” shall be substituted;

(b) after sub-section (2), the following proviso shall be inserted, namely:—

“Provided that any regulation, in respect of the salary and allowances payable to and other conditions of service of the officers and other employees of the Authority, made before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, shall cease to have effect immediately on the notification of rules made under clause (ca) of sub-section (2) of section 35.”

9. In section 11 of the principal Act,—

Amendment of section 11.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to—

(a) make recommendations, either *suo motu* or on a request from the licensor, on the following matters, namely:—

(i) need and timing for introduction of new service provider;

(ii) terms and conditions of licence to a service provider;

(iii) revocation of licence for non-compliance of terms and conditions of licence;

(iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(v) technological improvements in the services provided by the service providers;

(vi) type of equipment to be used by the service providers after inspection of equipment used in the network;

(vii) measures for the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(viii) efficient management of available spectrum;

(b) discharge the following functions, namely:—

(i) ensure compliance of terms and conditions of licence;

(ii) notwithstanding anything contained in the terms and conditions of the licence granted before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, fix the terms and conditions of inter-connectivity between the service providers;

(iii) ensure technical compatibility and effective inter-connection between different service providers;

(iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(v) lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service;

(vi) lay-down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;

(vii) maintain register of inter-connect agreements and of all such other matters as may be provided in the regulations;

(viii) keep register maintained under clause (vii) open for inspection to any member of public on payment of such fee and compliance of such other requirement as may be provided in the regulations;

(ix) ensure effective compliance of universal service obligations;

(c) levy fees and other charges at such rates and in respect of such services as may be determined by regulations;

(d) perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act:

Provided that the recommendations of the Authority specified in clause (a) of this sub-section shall not be binding upon the Central Government:

Provided further that the Central Government shall seek the recommendations of the Authority in respect of matters specified in sub-clauses (i) and (ii) of clause (a) of this sub-section in respect of new licence to be issued to a service provider and the Authority shall forward its recommendations within a period of sixty days from the date on which that Government sought the recommendations:

Provided also that the Authority may request the Central Government to furnish such information or documents as may be necessary for the purpose of making recommendations under sub-clauses (i) and (ii) of clause (a) of this sub-section and that Government shall supply such information within a period of seven days from receipt of such request:

Provided also that the Central Government may issue a licence to a service provider if no recommendations are received from the Authority within the period specified in the second proviso or within such period as may be mutually agreed upon between the Central Government and the Authority:

Provided also that if the Central Government, having considered that recommendation of the Authority, comes to a *prima facie* conclusion that such recommendation cannot be accepted or needs modifications, it shall refer the recommendation back to the Authority for its reconsideration, and the Authority may, within fifteen days from the date of receipt of such reference, forward to the Central Government its recommendation after considering the reference made by that Government. After receipt of further recommendation if any, the Central Government shall take a final decision.”;

(b) in sub-section (3), for the words, brackets and figure “under sub-section (1)”, the words, brackets and figures “under sub-section (1) or sub-section (2)” shall be substituted.

10. In section 13 of the principal Act, the following proviso shall be inserted, namely:—

Amendment of section 13.

“Provided that no direction under sub-section (4) of section 12 or under this section shall be issued except on the matters specified in clause (b) of sub-section (1) of section 11.”

11. For Chapter IV of the principal Act, the following Chapter shall be substituted, namely:—

Substitution of new Chapter for Chapter IV.

#### ‘CHAPTER IV

#### APPELLATE TRIBUNAL

14. The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to—

Establishment of Appellate Tribunal.

(a) adjudicate any dispute—

(i) between a licensor and a licensee;

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers;

Provided that nothing in this clause shall apply in respect of matters relating to—

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969;

(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986;

(C) the dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885;

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.

14A. (1) The Central Government or a State Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute referred to in clause (a) of section 14.

Application for settlement of disputes and appeals to Appellate Tribunal.

(2) The Central Government or a State Government or a local authority or any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Appellate Tribunal.

54 of 1969.

68 of 1986.

13 of 1885.

(3) Every appeal under sub-section (2) shall be preferred within a period of thirty days from the date on which a copy of the direction or order or decision made by the Authority is received by the Central Government or the State Government or the local authority or the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:-

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an application under sub-section (1) or an appeal under sub-section (2), the Appellate Tribunal may, after giving the parties to the dispute or the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the dispute or the appeal and to the Authority, as the case may be.

(6) The application made under sub-section (1) or the appeal preferred under sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application or appeal finally within ninety days from the date of receipt of application or appeal, as the case may be:

Provided that where any such application or appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the application or appeal within that period.

(7) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any dispute made in any application under sub-section (1) or of any direction or order or decision of the Authority referred to in the appeal preferred under sub-section (2), on its own motion or otherwise, call for the records relevant to disposing of such application or appeal and make such orders as it thinks fit.

Composition of  
Appellate  
Tribunal.

14B. (1) The Appellate Tribunal shall consist of a Chairperson and not more than two Members to be appointed, by notification, by the Central Government.

(2) The selection of Chairperson and Members of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India.

(3) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by the Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Appellate Tribunal with one or two Members of such Tribunal as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson of the Appellate Tribunal, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise its jurisdiction.

(4) Notwithstanding anything contained in sub-section (2), the Chairperson of the Appellate Tribunal may transfer a Member of such Tribunal from one Bench to another Bench.

(5) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member of the Appellate Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson to such Bench as the Chairperson may deem fit.



14C. A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he—

Qualifications  
for appointment  
of Chairperson  
and Members.

(a) in the case of Chairperson, is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court;

(b) in the case of a Member, has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration.

14D. The Chairperson and every other Member of the Appellate Tribunal shall hold office as such for a term not exceeding three years from the date on which he enters upon his office:

Term of office.

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of Chairperson, the age of seventy years;

(b) in the case of any other Member, the age of sixty-five years.

14E. The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed:

Terms and  
conditions of  
service.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

14F. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Vacancies.

14G. (1) The Central Government may remove from office, the Chairperson or any Member of the Appellate Tribunal, who—

Removal and  
resignation.

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as the Chairperson or a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member of the Appellate Tribunal shall not be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central Government, has, on an enquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the Chairperson or a Member ought on such ground or grounds to be removed.

(3) The Central Government may suspend from office, the Chairperson or a Member of the Appellate Tribunal in respect of whom a reference has been made to the Supreme Court under sub-section (2), until the Central Government has passed an order on receipt of the report of the Supreme Court on such reference.

Staff of  
Appellate  
Tribunal.

14H. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

Distribution of  
business  
amongst  
Benches.

14-I. Where Benches are constituted, the Chairperson of the Appellate Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Power of  
Chairperson to  
transfer cases.

14J. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

Decision to be  
by majority.

14K. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Appellate Tribunal who shall hear the point or points himself and such point or points shall be decided according to the opinion of the majority who have heard the case, including those who first heard it.

Members, etc.,  
to be public  
servants.

14L. The Chairperson, Members and other officers and employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Transfer of  
pending cases.

14M. All applications, pending for adjudication of disputes before the Authority immediately before the date of establishment of the Appellate Tribunal under this Act, shall stand transferred on that date to such Tribunal:

Provided that all disputes being adjudicated under the provisions of Chapter IV as it stood immediately before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, shall continue to be adjudicated by the Authority in accordance with the provisions contained in that Chapter, till the establishment of the Appellate Tribunal under this Act:

Provided further that all cases referred to in the first proviso shall be transferred by the Authority to the Appellate Tribunal immediately on its establishment under section 14.

Transfer of  
appeals.

14N. (1) All appeals pending before the High Court immediately before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, shall stand transferred to the Appellate Tribunal on its establishment under section 14.

(2) Where any appeal stands transferred from the High Court to the Appellate Tribunal under sub-section (1),—

(a) the High Court shall, as soon as may be after such transfer, forward the records of such appeal to the Appellate Tribunal; and

(b) the Appellate Tribunal may, on receipt of such records, proceed to deal with such appeal, so far as may be from the stage which was reached before such transfer or from any earlier stage or *de novo*, as the Appellate Tribunal may deem fit.

Civil court not  
to have  
jurisdiction.

15. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

5 of 1908.

16. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

Procedure and powers of Appellate Tribunal.

5 of 1908.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

1 of 1872.

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it, *ex parte*;

(h) setting aside any order of dismissal of any application for default or any order passed by it, *ex parte*; and

(i) any other matter which may be prescribed.

45 of 1860.

(3) Every proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974.

17. The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Right to legal representation.

*Explanation.*—For the purposes of this section,—

38 of 1949.

(a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980.

(b) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

23 of 1959.

(c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) “legal practitioner” means an advocate, *vakil* or an attorney of any High Court, and includes a pleader in practice.

5 of 1908.

18. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code.

Appeal to Supreme Court.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.



(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against:

Provided that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Orders passed by Appellate Tribunal to be executable as a decree.

19. (1) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Penalty for wilful failure to comply with orders of Appellate Tribunal.

20. If any person wilfully fails to comply with the order of the Appellate Tribunal, he shall be punishable with fine which may extend to one lakh rupees and in case of a second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which such default continues.

Amendment of section 23.

12. In section 23 of the principal Act, after sub-section (2), the following *Explanation* shall be inserted, namely:—

"*Explanation.*— For the removal of doubts, it is hereby declared that the decisions of the Authority taken in the discharge of its functions under clause (b) of sub-section (1) and sub-section (2) of section 11 and section 13, being matters appealable to the Appellate Tribunal, shall not be subject to audit under this section."

Amendment of section 35.

13. In section 35 of the principal Act, in sub-section (2),—

(a) after clause (a), the following clause shall be inserted, namely:—

"(aa) the allowances payable to the part-time members under sub-section (6A) of section 5;"

(b) after clause (c), the following clause shall be inserted, namely:—

"(ca) the salary and allowances and other conditions of service of officers and other employees of the Authority under sub-section (2) of section 10;"

(c) after clause (d), the following clauses shall be inserted, namely:—

"(da) the form, the manner of its verification and the fee under sub-section (3) of section 14A;

(db) the salary and allowances payable to and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under section 14B;

(dc) the salary and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 14H;

(dd) any other power of a civil court required to be prescribed under clause (i) of sub-section (2) of section 16;"

Amendment of section 36.

14. In section 36 of the principal Act, in sub-section (2),—

(a) clause (c) shall be omitted;

(b) in clause (d), for the words, brackets and letter "under clause (1)", the words, brackets, figures and letter "under sub-clause (vii) of clause (b)" shall be substituted;

(c) in clause (e), for the words, brackets and letter "under clause (m)", the words, brackets, figures and letter "under sub-clause (viii) of clause (b)" shall be substituted



(d) in clause (f), for the words, brackets and letter "under clause (p)", the words, brackets and letter "under clause (c)" shall be substituted.

Ord. 2 of 2000.

15. (1) The Telecom Regulatory Authority of India (Amendment) Ordinance, 2000, is hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

Sd/-

RAGHBIR SINGH,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 16th December, 2000.

No. : RP/54/2000/Act-1/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

##### (Legislative Department)

New Delhi, the 27th March, 2000/Chaitra 7, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 25th March, 2000, and is hereby published for general information:—

#### THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ACT, 2000

(Act No. 1 of 2000)

(25th March, 2000.)

An Act further to amend the Recovery of Debts Due to Banks and  
Financial Institutions  
Act, 1993.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000.

(2) It shall be deemed to have come into force on the 17th day of January, 2000.

Short title and  
commence-  
ment.

Substitution of  
designation.

2. In the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 51 of 1993.  
(hereinafter referred to as the principal Act), for the words "the Presiding Officer of the Appellate Tribunal", "the Presiding Officer of an Appellate Tribunal", "the Presiding Officer of a Tribunal or an Appellate Tribunal", wherever they occur, the words "the Chairperson of the Appellate Tribunal", "the Chairperson of an Appellate Tribunal", "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall respectively be substituted.

Amendment of  
section 2.

3. In section 2 of the principal Act,—

(i) after clause (e), the following clause shall be inserted, namely:—

'(ea) "Chairperson" means a Chairperson of an Appellate Tribunal appointed under section 9;'

(ii) for clause (g), the following clause shall be substituted, namely:—

'(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;'

(iii) after clause (j), the following clause shall be inserted, namely:—

'(ja) "Presiding Officer" means the Presiding Officer of the Debts Recovery Tribunal appointed under sub-section (1) of section 4;'

Amendment of  
section 7.

4. In section 7 of the principal Act,—

(a) in sub-section (1), for the words "with a Recovery Officer", the words "with one or more Recovery Officers" shall be substituted;

(b) in sub-section (2), for the words "The Recovery Officer", the words "The Recovery Officers" shall be substituted;

(c) in sub-section (3), for the words "Recovery Officer", the words "Recovery Officers" shall be substituted.

Amendment of  
section 8.

5. In section 8 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Notwithstanding anything contained in sub-sections (1) and (2), the Central Government may authorise the Chairperson of one Appellate Tribunal to discharge also the functions of the Chairperson of other Appellate Tribunal."

Amendment of  
section 13.

6. In section 13 of the principal Act, in the proviso, for the words "the said Presiding Officers shall be varied to their", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal shall be varied to his" shall be substituted.

Amendment of  
section 15.

7. In section 15 of the principal Act,—

(a) in sub-section (1), in the proviso, for the words "the said Presiding Officer", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall be substituted;

(b) in sub-section (2), for the words "the Presiding Officer concerned", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall be substituted;

(c) in sub-section (3), for the words "the aforesaid Presiding Officer", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall be substituted.

8. After section 17 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 17A.

"17A. (1) The Chairperson of an Appellate Tribunal shall exercise general power of superintendence and control over the Tribunals under his jurisdiction including the power of appraising the work and recording the annual confidential reports of Presiding Officers.

Power of Chairperson of Appellate Tribunal.

(2) The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties, and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal."

9. For section 19 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 19.

"19. (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction—

Application to the Tribunal.

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(c) the cause of action, wholly or in part, arises.

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has a claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed:

Provided that the fee may be prescribed having regard to the amount of debt to be recovered:

Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of section 31.

(4) On receipt of the application under sub-section (1) or sub-section (2), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The defendant shall, at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence.

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

(7) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.



(8) A defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

(10) The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of such application make such order as it thinks fit.

(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(13) (A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,—

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest,

the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

(14) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(15) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub-section (14).

(16) If an order of attachment is made without complying with the provisions of sub-section (13), such attachment shall be void.

(17) In the case of disobedience of an order made by the Tribunal under sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order,—

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending applications before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

(e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.

(19) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956, the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.

(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated:

Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

Amendment of section 27.	10. In section 27 of the principal Act, in sub-section (4), after the words "is reduced", the words "or enhanced" shall be inserted.
Amendment of section 28.	11. In section 28 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:— <p>"(4A) The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company, any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets."</p>
Substitution of new section for section 30.	12. For section 30 of the principal Act, the following section shall be substituted, namely:—
Appeal against the order of Recovery Officer.	"30. (1) Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal. <p>(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 25 to 28 (both inclusive)."</p>
Amendment of section 31.	13. In section 31 of the principal Act, in sub-section (2), in clause (b), the words "or <i>de novo</i> " shall be omitted.
Insertion of new section 31A. Power of Tribunal to issue certificate of recovery in case of decree or order.	14. After section 31 of the principal Act, the following section shall be inserted, namely:— <p>"31A. (1) Where a decree or order was passed by any court before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 and has not yet been executed, then, the decree-holder may apply to the Tribunal to pass an order for recovery of the amount.  <p>(2) On receipt of an application under sub-section (1), the Tribunal may issue a certificate for recovery to a Recovery Officer.  <p>(3) On receipt of a certificate under sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was a certificate in respect of a debt recoverable under this Act."</p></p></p>
Substitution of new section for section 32. Chairperson, Presiding Officer and staff of Appellate Tribunal and Tribunal to be public servants.	15. For section 32 of the principal Act, the following section shall be substituted, namely:— <p>"32. The Chairperson of an Appellate Tribunal, the Presiding Officer of a Tribunal, the Recovery Officer and other officers and employees of an Appellate Tribunal and a Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code."</p>
Amendment of section 34.	16. In section 34 of the principal Act, in sub-section (2), for the words, brackets and figures "and the Sick Industrial Companies (Special Provisions) Act, 1985", the words, brackets and figures", the Sick Industrial Companies (Special Provisions) Act, 1985 and the Small Industries Development Bank of India Act, 1989" shall be substituted.
Amendment of section 36.	17. In section 36 of the principal Act,— <p>(a) in sub-section (2),—  <p>(i) in clause (a), for the words "the Presiding Officers", the words "the Chairpersons, the Presiding Officers" shall be substituted;</p></p>

45 of 1960.

1 of 1986.

39 of 1989.

(ii) in clause (b), for the words "the Presiding Officers of the Tribunals and Appellate Tribunals", the words "the Chairpersons of Appellate Tribunals and the Presiding Officers of the Tribunals" shall be substituted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every notification issued under sub-section (4) of section 1, section 3 and section 8 and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule or both Houses agree that the notification or rule should not be issued or made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule."

18. (1) The Recovery of Debts Due to Banks and Financial Institutions (Amendment) Ord. 1 of 2000. Ordinance, 2000, is hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

Sd/—

RAGHBIR SINGH,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.





सत्यमेव जयते

# The Gujarat Government Gazette

## EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

### PART - VI

#### Acts of Parliament and Ordinances Promulgated by the President

##### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 19th December, 2000.

No. : RP/60/2000/Act-7/2000/E.—The following Act of Parliament is republished for general information:—

##### GOVERNMENT OF INDIA

##### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

##### (Legislative Department)

*New Delhi, the 27th March, 2000/Chaitra 7, 1922 (Saka)*

The following Act of Parliament received the assent of the President on the 27th March, 2000, and is hereby published for general information:—

#### THE SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA (AMENDMENT) ACT, 2000

(ACT No. 7 OF 2000)

(27th March, 2000.)

An Act to amend the Small Industries Development Bank of India Act, 1989.

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Small Industries Development Bank of India (Amendment) Act, 2000. Short title.

39 of 1989.

2. In section 2 of the Small Industries Development Bank of India Act, 1989 (hereinafter referred to as the principal Act),—

Amendment  
of section 2.

(a) for clause (b), the following clause shall be substituted, namely:—

'(b) "chairman and managing director" means the chairman and managing director referred to in clause (a) of sub-section (1) of section 6;'

(b) in clause (e), for the words "Managing Director", the words "chairman and managing director and whole-time director" shall be substituted;

(c) after clause (f), the following clause shall be inserted, namely:—

'(fa) "General Insurance Corporation" means the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972;'

57 of 1972.

(d) after clause (h), the following clause shall be inserted, namely:—

'(ha) "Life Insurance Corporation" means the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956;'

31 of 1956.

(e) clause (i) shall be omitted;

(f) after clause (l), the following clause shall be inserted, namely:—

'(la) "public sector bank" means the State Bank of India constituted under the State Bank of India Act, 1955, a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;'

23 of 1955.

38 of 1959.

5 of 1970.

40 of 1980.

Substitution of  
new sections  
for sections  
4 to 6.  
Authorised  
capital.

3. For sections 4 to 6 of the principal Act, the following sections shall be substituted, namely:—

'4. The authorised capital of the Small Industries Bank shall be one thousand crores of rupees divided into seventy-five crores fully paid-up equity shares of rupees ten each and twenty-five crores of fully paid-up redeemable preference shares of rupees ten each :

Provided that the Central Government may, on the recommendation of the Board, by notification, increase the authorised capital to an amount not exceeding two thousand crores of rupees consisting of such number of equity shares and redeemable preference shares as it may deem fit.

Conversion of  
equity shares  
into redeem-  
able prefer-  
ence shares.

4A. (1) The Central Government may, at any time after the commencement of the Small Industries Development Bank of India (Amendment) Act, 2000, by notification, convert such number of equity shares held by the Development Bank, the public sector banks, the General Insurance Corporation, the Life Insurance Corporation and other institutions owned or controlled by the Central Government, not exceeding twenty-five crores, as it may decide, into redeemable preference shares :

Provided that such conversion shall in no case reduce the equity shares held in aggregate by the Development Bank, the public sector banks, the General Insurance Corporation, the Life Insurance Corporation and other institutions owned or controlled by the Central Government to less than fifty-one per cent.

(2) The redeemable preference shares referred to in sub-section (1) shall—

(a) carry such fixed rate of dividend as the Central Government may specify at the time of such conversion, and

(b) neither be transferable nor carry any voting rights.

(3) The redeemable preference shares referred to in sub-section (1) shall be redeemed by the Small Industries Bank within three years from the date of such conversion in such instalments and in such manner as the Board may determine.

Transfer of  
capital.

4B. On such date as the Central Government may, in consultation with the Development Bank, by notification, specify (hereinafter referred to as "the specified date"), not less than fifty-one per cent. of the issued capital of the Small Industries Bank which has been subscribed by the Development Bank as on the date immediately preceding the specified date shall, stand transferred to, and vested in, the public sector banks, the General Insurance Corporation, the Life Insurance Corporation and other institutions owned or controlled by the Central Government in such proportion, manner and on such terms and conditions as may be determined by that Government.

Issued capital.

4C. (1) The issued capital, of the Small Industries Bank, of four hundred and fifty crores of rupees, immediately before the commencement of the Small Industries

Development Bank of India (Amendment) Act, 2000, shall, on such commencement, stand divided into forty-five crores equity shares of rupees ten each.

(2) The Board may, from time to time, increase the issued equity share capital or redeemable preference share capital of the Small Industries Bank by allotment of shares to such persons and on such terms and conditions as the Board may determine:

Provided that no increase in the issued equity capital shall be made in such a manner that the Development Bank, the public sector banks, the General Insurance Corporation, the Life Insurance Corporation and other institutions owned or controlled by the Central Government, hold in aggregate at any time, less than fifty-one per cent. of the issued equity share capital of the Small Industries Bank.

4D. (1) The Small Industries Bank may, with the prior approval of the Central Government, by a resolution passed in a general meeting of the shareholders, reduce its share capital in any way.

Reduction of share capital.

(2) Without prejudice to the generality of the foregoing power, the share capital may be reduced by—

(a) extinguishing or reducing the liability on any of its equity shares in respect of the share capital not paid-up;

(b) either with or without extinguishing or reducing liability on any of its equity shares, cancelling any paid-up share capital which is lost, or is unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its equity shares, paying off any paid-up share capital which is in excess of the wants of the Small Industries Bank.

(3) In any general meeting referred to in sub-section (1), the resolution for reduction of share capital shall be passed by shareholders entitled to vote, voting in person, or, where proxies are allowed, by proxy, and the votes cast in favour of the resolution are not less than three times the number of the votes, if any, cast against the resolution by shareholders so entitled and voting.

4E. Every shareholder of the Small Industries Bank holding equity shares shall have a right to vote in respect of such shares on every resolution and his voting right on a poll shall be in proportion to his share of the paid-up equity share capital of the Small Industries Bank:

Restriction on exercising of voting right.

Provided, however, that no shareholder, other than the Development Bank, the public sector banks, the General Insurance Corporation, the Life Insurance Corporation and other institutions owned or controlled by the Central Government, shall be entitled to exercise voting rights in respect of any equity shares held by him in excess of ten per cent. of the issued equity share capital.

5. (1) The general superintendence, direction and management of affairs and business of the Small Industries Bank shall vest in a Board of Directors which may exercise all powers and do all such acts and things as may be exercised or done by the Small Industries Bank and are not by this Act expressly directed or required to be done by the Small Industries Bank in general meeting.

Management.

(2) The Board may direct that any power exercisable by it under this Act shall also be exercisable in such cases and subject to such conditions, if any, as may be specified by it, by the chairman and managing director or the whole-time directors.

(3) Subject to the provisions of this Act, the Board in discharging its functions shall act on business principles with due regard to public interest.

6. (1) The Board shall consist of the following, namely:—

(a) a chairman and managing director appointed by the Central Government;

(b) two whole-time directors appointed by the Central Government;

(c) two directors who shall be officials of the Central Government nominated by the Central Government;

Constitution of Board.

(d) three directors to be nominated in the prescribed manner by the Development Bank, the public sector banks, the General Insurance Corporation, the Life Insurance Corporation and other institutions owned or controlled by the Central Government;

(e) three directors, including one Director from the officials of the State Financial Corporations, nominated by the Central Government from amongst the persons having special knowledge of, or professional experience in, science, technology, economics, industry, banking, industrial co-operatives, law, industrial finance, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in, which would, in the opinion of the Central Government, be useful to the Small Industries Bank;

(f) such number of directors not exceeding four elected in the prescribed manner, by shareholders, other than the Development Bank, the public sector banks, the General Insurance Corporation, the Life Insurance Corporation and other institutions owned or controlled by the Central Government, whose names are entered in the register of shareholders of the Small Industries Bank ninety days before the date of the meeting in which such election takes place on the following basis, namely:—

(i) where the total amount of equity share capital issued to such shareholders is ten per cent. or less of the total issued equity share capital, two directors;

(ii) where the total amount of equity share capital issued to such shareholders is more than ten per cent. but less than twenty-five per cent. of the total issued equity share capital, three directors; and

(iii) where the total amount of equity share capital issued to such shareholders is twenty-five per cent. or more of the total issued equity share capital, four directors:

Provided that if the percentage of holding of issued equity share capital with the shareholders, other than the Development Bank, the public sector banks, the General Insurance Corporation, the Life Insurance Corporation and other institutions owned or controlled by the Central Government, does not permit election of four directors or until the assumption of charge by the elected directors, the Board may at any time co-opt such number of directors, not exceeding four, from amongst the persons having special knowledge of, or professional experience in, science, technology, economics, industry, banking, industrial co-operatives, law, industrial finance, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in, which would, in the opinion of the Board, be useful to the Small Industries Bank for carrying out its functions, who shall hold office until the assumption of charge by the elected directors and an equal number of such co-opted directors shall retire in the order of co-option.

(2) The chairman and managing director and the whole-time directors shall hold office for such term not exceeding five years as the Central Government may specify in this behalf and any person so appointed shall be eligible for re-appointment.

(3) Notwithstanding anything contained in sub-section (1), the Central Government shall have the right to terminate the term of office of the chairman and managing director or the whole-time director, as the case may be, at any time before the expiry of the term specified under sub-section (2) by giving him notice of not less than three months in writing or three months' salary and allowances in lieu of such notice and the chairman and managing director or the whole-time director, as the case may be, shall also have the right to relinquish his office at any time before the expiry of the term specified under sub-section (2) by giving, the Central Government, notice of not less than three months in writing.

(4) The chairman and managing director and the whole-time directors shall receive such salary and allowances, as may be determined by the Central Government.



(5) The Central Government may, at any time, remove the chairman and managing director or the whole-time director, as the case may be, from office:

Provided that no person shall be removed from his office, under this sub-section, unless he has been given an opportunity of showing cause against his removal.

(6) Every Director nominated under clauses (c), (d) and (e) of sub-section (1), shall hold office during the pleasure of the authority nominating him.

(7) Subject to the provisions of sub-section (6),—

(a) every Director nominated under clauses (d) and (e) of sub-section (1) shall hold office for such term not exceeding three years as the Central Government, or the authority nominating him, as the case may be, may specify in this behalf and thereafter until his successor assumes office, and shall be eligible for re-nomination:

Provided that no such Director shall hold office continuously for a period exceeding six years; and

(b) every Director elected under clause (f) of sub-section (1) shall hold office for three years and thereafter until his successor assumes office and shall be eligible for re-election:

Provided that no such director shall hold office continuously for a period exceeding six years.

(8) The shareholders, other than the Development Bank, the public sector banks, the General Insurance Corporation, the Life Insurance Corporation and other institutions owned or controlled by the Central Government may, after giving the director a reasonable opportunity of being heard in the manner as may be prescribed, by resolution passed by majority of the votes of such shareholders holding in the aggregate not less than one-half of the equity share capital held by such shareholders, remove any director elected under clause (f) of sub-section (1) and elect another director in his place to fill the vacancy so caused;

(9) (i) A meeting of the Board shall be held at least once in every three months and at least four meetings shall be held every year and the meetings may be held at such places as may be prescribed.

(ii) Notice of every meeting of the Board shall be given in writing to every Director for the time being in India, and at his usual address in India to every other Director.

(10) Subject to the provisions contained in this Chapter, the Board may meet at such times and places and shall observe such rules of procedure in regard to transaction of its business including the manner of adoption of resolutions as may be prescribed.

(11) The chairman and managing director, if for any reason, is unable to attend a meeting of the Board, any other Director nominated by the chairman and managing director in this behalf and in the absence of such nomination, any director elected by the directors present from among themselves, shall preside at the meeting.

(12) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the directors present and voting, and in the event of an equality of votes, the chairman and managing director, or in his absence, the person presiding, shall have a second or casting vote.

(13) Save as provided in sub-section (12), every Director of the Board shall have one vote.

4. Section 7 of the principal Act shall be omitted.

5. For sections 8 and 9 of the principal Act, the following sections shall be substituted, namely:—

Omission of section 7.

Substitution of new sections for sections 8 and 9.

Disqualifica-  
tions of  
directors.

"8. A person shall not be eligible for being elected as a director under clause (f) of sub-section (1) of section 6, if he—

(a) has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;

(b) is an undischarged insolvent;

(c) has applied to be adjudicated as an insolvent and his application is pending;

(d) has been convicted by a court of competent jurisdiction, of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence; or

(e) has not paid any call in respect of shares of the Small Industries Bank held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call.

9. (1) The office of a director shall become vacant if he—

(a) becomes subject to any of the disqualifications mentioned in section 8; or

(b) resigns his office by giving notice in writing under his hand and the resignation is accepted; or

(c) absents himself from three consecutive meetings of the Board without obtaining leave of absence from the Board.

(2) Notwithstanding anything contained in clause (a) of sub-section (1), the disqualifications referred to in that clause shall not take effect—

(a) for thirty days from the date of the adjudication, sentence or order;

(b) where any appeal or petition is preferred within thirty days aforesaid against the adjudication, sentence or conviction resulting in the sentence or order until the expiry of seven days from the date on which such appeal or petition is disposed of; or

(c) where within the seven days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, conviction or order and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of."

Omission of  
sections 10 and  
11.

6. Sections 10 and 11 of the principal Act shall be omitted.

Substitution of  
new sections  
for section 12.  
Executive  
Committee and  
other  
committees.

7. For section 12 of the principal Act, the following sections shall be substituted, namely:—

"12. (1) The Board shall constitute an Executive Committee consisting of the chairman and managing director, the whole-time directors and such other directors as it may deem fit.

(2) The Executive Committee shall discharge such functions as may be prescribed or as may, without prejudice to the provisions contained in section 34, be delegated to it by the Board.

(3) The Board may constitute such other committees whether consisting wholly of directors or wholly of other persons or partly of directors and partly of other persons for such purpose or purposes as it may think fit.

(4) The Executive Committee or any other committee constituted under this section shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

Fees and  
allowances of  
directors and  
members of  
committees.

12A. The directors and the members of a committee shall be paid such fees and allowances as may be prescribed for attending the meetings of the Board or of any committee constituted in pursuance of this Act and for attending to any other work of the Small Industries Bank:

Provided that no fees shall be payable to the chairman and managing director or to the whole-time directors or to any other director who is an official of the Government."

8. In section 13 of the principal Act, in sub-section (I),—

Amendment of  
section 13.

(a) for clause (i), the following clause shall be substituted, namely:—

"(i) granting loans and advances to any State Financial Corporation, State Industrial Development Corporation, State Small Industries Corporation, scheduled bank, State Cooperative Bank or such other financial institutions, approved by the Board in this behalf, by way of refinance on such terms and conditions as it may deem fit to impose, of any loans or advances granted to industrial concerns in the small-scale sector by such corporation, bank, or institution or, of any loans or advances granted by the State Financial Corporation or State Industrial Development Corporation to any other industrial concern, which are repayable within a period not exceeding twenty-five years;"

(b) in clauses (iii) and (iv), for the words "such other financial institutions, as the Central Government may, on the recommendation of the Development Bank, specify", the words "such other financial institutions as may be approved by the Board in this behalf" shall be substituted;

(c) in clause (vii), for the words "as the Central Government may, on the recommendation of the Development Bank, specify", the words "approved by the Board in this behalf" shall be substituted;

(d) in clause (xviii), in sub-clause (b), for the words "as the Central Government may, on the recommendation of the Development Bank, specify", the words "as approved by the Board in this behalf" shall be substituted;

(e) in clause (xix), for the words "as the Central Government may, on the recommendation of the Development Bank, specify", the words "as approved by the Board in this behalf" shall be substituted;

(f) in clause (xxiii), for the words "the Central Government on the recommendation of the Development Bank", the words "the Central Government" shall be substituted;

(g) in clause (xxix), in sub-clause (b), for the words "the Development Bank", the words "the Board" shall be substituted;

(h) in clause (xxx), for the words "the Development Bank", the words "the Board" shall be substituted.

9. In section 15 of the principal Act, in sub-section (I), in clauses (c) and (d), for the words "approved by the Development Bank", the words "approved by the Board" shall be substituted.

Amendment of  
section 15.

10. For section 16 of the principal Act, the following section shall be substituted, namely:—

Substitution of  
new section for  
section 16.

"16. The Small Industries Bank may invest (whether by way of deposits in banks or otherwise) the amounts available in the Small Industries Development Assistance Fund or the Small Industries General Fund or any other fund or account which are not for the time being required for the transaction of business in such manner as may be approved by the Board."

Investment.

11. In section 19 of the principal Act, in sub-section (I), the words "and the Development Bank" shall be omitted.

Amendment of  
section 19.

Insertion of  
new Chapters  
IVA and IVB.

12. After Chapter IV of the principal Act, the following Chapters shall be inserted, namely:—

#### CHAPTER IVA

##### SHARES

Free transfer-  
ability of  
shares.

20A. (1) Save as otherwise provided in sub-section (2), the equity shares of the Small Industries Bank shall be freely transferable.

(2) Nothing contained in sub-section (1) shall entitle the Development Bank, the public sector banks, the General Insurance Corporation, the Life Insurance Corporation and other institutions owned or controlled by the Central Government to transfer any shares held by them in the Small Industries Bank if such transfer will result in reducing the equity shares held in aggregate by them to less than fifty-one per cent. of the issued equity share capital of the Small Industries Bank.

Register of  
shareholders.

20B. (1) The Small Industries Bank shall keep at its head office a register, in one or more books, of the shareholders and shall enter therein the following particulars so far as they may be available, namely:—

(i) the names, addresses and occupations, if any, of the shareholders and a statement of the shares held by each shareholder, distinguishing each share by its denoting number;

(ii) the date on which each person is so entered as a shareholder;

(iii) the date on which any person ceases to be a shareholder; and

(iv) such other particulars as may be prescribed:

Provided that nothing in this sub-section shall apply to the shares held with a depository under the Depositories Act, 1996.

22 of 1996.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Small Industries Bank to keep the register of the shareholders in computer floppies, diskettes, compact disk or any other electronic form, subject to such safeguards, as may be prescribed.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of, or extract from, the register of the shareholders, certified to be a true copy under the hand of an officer of the Small Industries Bank authorised in this behalf, shall, in all legal proceedings, be admissible in evidence.

1 of 1872.

(4) The Register of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 shall be deemed to be a Register of the shareholders for the purposes of this Act.

22 of 1996.

Trust not to be  
entered on the  
register of  
shareholders.

20C. Notwithstanding anything contained in section 20B, no notice of any trust, express, implied or constructive, shall be entered on the register of shareholders or be receivable by the Small Industries Bank:

Provided that nothing in this section shall apply to a depository in respect of the shares held by it as a registered owner on behalf of a beneficial owner.

*Explanation.*—For the purposes of section 20B and this section, the expressions “beneficial owner”, “depository” and “registered owner” shall have the meanings respectively assigned to them in clauses (a), (e) and (j) of sub-section (1) of section 2 of the Depositories Act, 1996.

22 of 1996.

Board's right to  
refuse registra-  
tion of transfer  
of shares.

20D. (1) The Board may refuse to register the transfer of any shares in the name of the transferee on any one or more of the following grounds, and on no other ground, namely:—



-(a) the transfer of the shares is in contravention of the provisions of this Act or regulations made thereunder or any other law;

(b) the transfer of the shares, in the opinion of the Board, is prejudicial to the interests of the Small Industries Bank or to the public interest;

(c) the transfer of shares is prohibited by an order of a court, tribunal or any other authority under any law for the time being in force.

(2) The Board shall, before the expiry of two months from the date on which the instrument of transfer of shares of the Small Industries Bank is lodged with it for the purpose of registration of such transfer, not only form, in good faith, its opinion as to whether such registration ought not or ought to be refused on any of the grounds referred to in sub-section (1) but also,—

(a) if it has formed the opinion that such registration ought not to be so refused, effect such registration; and

(b) if it has formed the opinion that such registration ought to be refused on any of the grounds mentioned in sub-section (1), intimate the transferor and the transferee by notice in writing.

(3) An appeal against the order of refusal of the Board under sub-section (2) shall lie to the Central Government and the procedure for filing and hearing of such appeal shall be in accordance with the rules made by the Central Government in this behalf.

2 of 1882.

20E. Notwithstanding anything contained in the Indian Trusts Act, 1882, the shares of the Small Industries Bank shall be deemed to be included among the securities enumerated in section 20 of the said Act.

Shares to be securities under the Indian Trusts Act, 1882.

#### CHAPTER IVB

##### MEETINGS AND PROCEEDINGS

20F. (1) The Small Industries Bank shall in each year hold, in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting and that of the next:

Annual general meeting.

Provided that the Small Industries Bank may hold the first annual general meeting within a period of six months from the date on which it allots shares for the first time to public for subscription:

Provided further that the Central Government may extend the time within which any annual general meeting shall be held by a period not exceeding three months.

(2) Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday, and shall be held either at head office or at some other place within the city or town in which the head office is situated.

*Explanation.*—For the purposes of this section, "public holiday" means a public holiday within the meaning of the Negotiable Instruments Act, 1881:

26 of 1881.

Provided that no Sunday shall be deemed to be such a holiday in relation to any meeting:

Provided further that no day declared by the Central Government to be a public holiday shall be deemed to be such a holiday, in relation to any meeting, unless the declaration was notified before the issue of the notice convening such meeting.

20G. (1) The shareholders present at an annual general meeting shall be entitled to discuss and adopt—

(a) the balance-sheet and profit and loss account of the Small Industries Bank made up to the date on which its accounts are closed and balanced;

Matters to be discussed and procedure in annual general meeting.

(b) the report of working of the Small Industries Bank for the period covered by the accounts;

(c) the auditor's report on the balance-sheet and accounts;

(d) proposals for declaration of dividend and capitalisation of reserves;

(e) appointment of auditors referred to in sub-section (1) of section 30.

(2) The shareholders present at an annual general meeting may also discuss any other matter to be transacted at such meetings in accordance with the provisions of this Act.

(3) The matters relating to—

(a) the manner in which annual general meeting or other meetings are held under this Act and the procedure to be followed thereat;

(b) the manner in which voting rights may be exercised and resolutions may be passed; and

(c) the procedure for transaction of business at such meetings and related matters,

shall be such as may be prescribed.

Amendment of  
section 21.

13. In section 21 of the principal Act, in sub-section (2), for the words "Development Bank", the word "Board" shall be substituted.

Amendment of  
section 23.

14. In section 23 of the principal Act, for the words "Development Bank", the word "Board" shall be substituted.

Amendment of  
section 25.

15. In section 25 of the principal Act,—

(a) in sub-section (2), for the words "Development Bank", the word "Board" shall be substituted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The Small Industries Development Assistance Fund shall be audited by the auditors, appointed under sub-section (1) of section 30, who shall make a separate report thereon.";

(c) in sub-section (5), the words "and the Development Bank" shall be omitted.

Amendment of  
section 26.

16. In section 26 of the principal Act, the words "on the recommendation of the Development Bank," shall be omitted.

Amendment of  
section 28.

17. In section 28 of the principal Act, in sub-section (2), for the words "Development Bank", the word "Board" shall be substituted.

Amendment of  
section 29.

18. In section 29 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) After making provision for bad and doubtful debts, depreciation of assets and for all other matters for which provision is necessary or expedient or which is usually provided for by bankers and for the reserve fund referred to in sub-section (1), and after transferring a part of the profits to such other reserves or funds as may be considered appropriate, the Board may, out of its net profits, propose a dividend."

Amendment of  
section 30.

19. In section 30 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The accounts of the Small Industries Banks shall be audited by auditors duly qualified to act as auditors under sub-section (1) of section 226 of the Companies Act, 1956, who shall be appointed by the Small Industries Bank in general meeting of the shareholders out of the panel of auditors approved by the Reserve Bank for such term and on such remuneration as the Reserve Bank may fix.";

(b) in sub-section (5), the words "and the Development Bank" shall be omitted.

20. In section 35 of the principal Act, for the words "the Central Government, the Reserve Bank and the Development Bank", the words "the Central Government and the Reserve Bank" shall be substituted.

Amendment of section 35.

21. In section 36 of the principal Act,—

Amendment of section 36.

(a) in sub-section (2), for the words "as may be specified by the Development Bank", the words "as may be specified by the Board" shall be substituted;

(b) in sub-section (3), the words "or the Development Bank" shall be omitted.

22. After section 37 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 37A.

"37A. (1) Any sums received by a borrowing institution in repayment or realisation of loans and advances refinanced either wholly or partly by the Small Industries Bank shall, to the extent of the accommodation granted by the Small Industries Bank and remaining outstanding, be deemed to have been received by the borrowing institution in trust for the Small Industries Bank, and shall accordingly be paid by such institution to the Small Industries Bank, as per the repayment schedule fixed by the Small Industries Bank.

Amounts and securities to be held in trust.

(2) Where an accommodation has been granted to a borrowing institution, all securities held, or which may be held, by such borrowing institution, on account of any transaction in respect of which such accommodation has been granted by the Small Industries Bank, shall be held by such institution in trust for the Small Industries Bank."

23. In section 45 of the principal Act, for the word "chairman", the words "chairman and managing director, the whole-time director" shall be substituted.

Amendment of section 45.

24. After section 51 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 51A.

"51A. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

Power to make rules by Central Government.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the procedure for filing and hearing of appeal against the refusal to register the transfer of shares by the Board under sub-section (3) of section 20D; and

(ii) any other matter which has to be, or may be, prescribed by rules under this Act."

25. In section 52 of the principal Act,—

Amendment of section 52.

(a) in sub-section (1), the words "with the previous approval of the Development Bank," shall be omitted;

(b) in sub-section (2), for clause (a), the following clauses shall be substituted, namely:—

"(a) the removal of Director under sub-section (8) of section 6;

(aa) the places of meetings of the Board under this Act and the procedure to be followed at such meetings including the quorum necessary for transaction of business and the manner of adoption of resolution under section 6;

(ab) the functions to be discharged by the Executive Committee under sub-section (2) of section 12;

(ac) the places of meetings of the Executive Committee and the procedure to be followed at such meetings under sub-section (4) of section 12;

(ad) such fees and allowances which may be paid to the directors and members of the Executive Committee under section 12A;

(ae) the particulars to be prescribed in the register of shareholders under clause (iv) of sub-section (1) of section 20B;

(af) the procedure relating to maintenance of register of shareholders in electronic form under sub-section (2) of section 20B;

(ag) the matters relating to the annual general meeting under sub-section (3) of section 20G;";

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every rule made by the Central Government, and every regulation made by the Board under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation."

Sd/—

RAGHBIR SINGH,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.





सत्यमेव जयते

# The Gujarat Government Gazette

## EXTRAORDINARY

PUBLISHED BY AUTHORITY

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FRIDAY, DECEMBER 22, 2000/PAUSA 1, 1922

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

### PART - VI

#### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 19th December, 2000.

No. : RP/63/2000/Act-10/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 12th May, 2000/Vaisakha 22, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 12th May, 2000, and is hereby published for general information:—

#### THE FINANCE ACT, 2000

(Act No. 10 of 2000)

(12th May, 2000.)

An Act to give effect to the financial proposals of the Central Government for the financial year 2000-2001.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

#### CHAPTER I

##### PRELIMINARY

1. (1) This Act may be called the Finance Act, 2000.

(2) Save as otherwise provided in this Act, sections 2 to 77 shall be deemed to have come into force on the 1st day of April, 2000.

Short title and  
commence-  
ment.

#### CHAPTER II

##### RATES OF INCOME-TAX

2. (1) Subject to the provisions of sub-sections (2) and (3), for the assessment year commencing on the 1st day of April, 2000, income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax as reduced by the rebate of income-tax calculated

Income-tax.

under Chapter VIII-A of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) shall be increased,— 43 of 1961.

(a) in the cases to which Paragraphs A, B, C and D of that Part apply, by a surcharge for purposes of the Union; and

(b) in the cases to which Paragraph E of that Part applies, by a surcharge, calculated in each case in the manner provided therein.

(2) In the cases to which Paragraph A of Part I of the First Schedule applies, where the assessee has, in the previous year, any net agricultural income exceeding six hundred rupees, in addition to total income, and the total income exceeds fifty thousand rupees, then,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the first fifty thousand rupees of the total income but without being liable to tax], only for the purpose of charging income-tax in respect of the total income; and

(b) the income-tax chargeable shall be calculated as follows:—

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of fifty thousand rupees, and the amount of income-tax shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income as so increased were the total income;

(iii) the amount of income-tax determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax in respect of the total income:

Provided that the amount of income-tax so arrived at, as reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, shall be increased by a surcharge for purposes of the Union calculated in each case in the manner provided in that Paragraph and the sum so arrived at shall be the income-tax in respect of the total income.

(3) In cases to which the provisions of Chapter XII or Chapter XII-A, or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, the tax chargeable shall be determined as provided in that Chapter or that section, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be:

Provided that the amount of income-tax computed in accordance with the provisions of sections 112 and 113, shall be increased by a surcharge for purposes of the Union or surcharge as provided in Paragraph A, B, C, D or E, as the case may be, of Part I of the First Schedule:

Provided further that in respect of any income chargeable to tax under section 115ACA or section 115B or section 115BB of the Income-tax Act, the amount of income-tax computed under this sub-section shall be increased,—

(i) in the case of a person other than a company being resident in India, by a surcharge, for purposes of the Union, calculated at the rate of ten per cent. of such income-tax, and

(ii) in the case of a domestic company, by a surcharge calculated at the rate of ten per cent. of such income-tax.

Provided further that the amount of income-tax computed in accordance with the provisions of sections 112 and 113 of the Income-tax Act shall be increased by a surcharge for purposes of the Union or surcharge as provided in Paragraph A, B, C, D or E, as the case may be, of Part III of the First Schedule:

Provided also that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115E and 115JB of the Income-tax Act, "advance tax" computed under the first proviso shall be increased,—

(a) by a surcharge, for purposes of the Union, calculated,—

(i) in the case of a co-operative society, a firm and a local authority, at the rate of ten per cent. of such "advance tax";

(ii) in the case of a person other than a company, a co-operative society, a firm and a local authority—

(A) at the rate of ten per cent. of such "advance tax" where the total income exceeds sixty thousand rupees but does not exceed one lakh fifty thousand rupees; or

(B) at the rate of fifteen per cent. of such "advance tax" where the total income exceeds one lakh fifty thousand rupees; and

(b) by a surcharge calculated at the rate of ten per cent. of such "advance tax" in the case of a domestic company.

(9) In the cases to which Paragraph A of Part III of the First Schedule applies, where the assessee has, in the previous year or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any net agricultural income exceeding six hundred rupees, in addition to total income and the total income exceeds fifty thousand rupees, then, in charging income-tax under sub-section (2) of section 174 or section 175 or sub-section (2) of section 176 of the said Act or in computing the "advance tax" payable under Chapter XVII-C of the said Act, at the rate or rates in force,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the first fifty thousand rupees of the total income but without being liable to tax], only for the purpose of charging or computing such income-tax or, as the case may be, "advance tax" in respect of the total income; and

(b) such income-tax or, as the case may be, "advance tax" shall be so charged or computed as follows:—

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax or "advance tax" shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of fifty thousand rupees, and the amount of income-tax or "advance tax" shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income were the total income;

(iii) the amount of income-tax or "advance tax" determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax or, as the case may be, "advance tax" determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax or, as the case may be, "advance tax" in respect of the total income:

(4) In cases in which tax has to be charged and paid under section 115-O or section 115R or section 115U of the Income-tax Act, the tax shall be charged and paid at the rate as specified in those sections and shall be increased,—

(a) in the case of a person other than a company, by a surcharge for purposes of the Union, calculated at the rate of ten per cent. of such tax;

(b) in the case of a domestic company, by a surcharge calculated at the rate of ten per cent. of such tax.

(5) In cases in which tax has to be deducted under sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, at the rates in force, the deduction shall be made at the rates specified in Part II of the First Schedule and shall be increased,—

(a) in the cases to which the provisions of item 1 of that Part apply, by a surcharge for purposes of the Union; and

(b) in the cases to which the provisions of sub-item (a) of item 2 of that Part apply, by a surcharge,

calculated in each case in the manner provided therein.

(6) In cases in which tax has to be deducted under sections 194C, 194E, 194EE, 194F, 194G, 194-I, 194J, 194K, 194L, 196A, 196B, 196C and 196D of the Income-tax Act, the deduction shall be made at the rates specified in those sections and shall be increased,—

(a) in the case of a person other than a company being resident in India, by a surcharge for purposes of the Union, calculated at the rate of ten per cent. of such tax;

(b) in the case of a domestic company, by a surcharge calculated at the rate of ten per cent. of such tax.

(7) In cases in which tax has to be collected under the proviso to section 194B or under section 206C of the Income-tax Act, the collection shall be made at the rates specified in that section or at the rates specified in Part II of the First Schedule, as the case may be, and shall be increased,—

(a) in the case of a person other than a company being resident in India, by a surcharge for purposes of the Union, calculated at the rate of ten per cent. of such tax;

(b) in the case of a domestic company, by a surcharge calculated at the rate of ten per cent. of such tax.

(8) Subject to the provisions of sub-section (9), in cases in which income-tax has to be charged under sub-section (4) of section 172 or sub-section (2) of section 174 or section 175 or sub-section (2) of section 176 of the Income-tax Act or deducted under section 192 of the said Act from income chargeable under the head "Salaries" or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed, at the rate or rates in force, such income-tax or, as the case may be, "advance tax" shall be so charged, deducted or computed at the rate or rates specified in Part III of the First Schedule and such tax as reduced by the rebate of income-tax calculated under Chapter VIII-A of the said Act shall be increased,—

(a) in the cases to which Paragraphs A, B, C and D of that Part apply, by a surcharge for purposes of the Union; and

(b) in the cases to which Paragraph E of that Part applies, by a surcharge, calculated in each case in the manner provided therein:

Provided that in cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, "advance tax" shall be computed with reference to the rates imposed by this sub-section or the rates as specified in that Chapter or section, as the case may be:



Provided that the amount of income-tax or "advance tax" so arrived at, as reduced by the rebate of income-tax calculated under Chapter VIII-A of the said Act, shall,—

(a) in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, referred to in Paragraph A of Part III, having a total income exceeding sixty thousand rupees, be increased by a surcharge for purposes of the Union—

(i) at the rate of ten per cent. of such income-tax or, as the case may be, "advance tax" where the total income exceeds sixty thousand rupees but does not exceed one lakh fifty thousand rupees; or

(ii) at the rate of fifteen per cent. of such income-tax or, as the case may be, "advance tax" where the total income exceeds one lakh fifty thousand rupees; and

(b) in the case of every artificial juridical person, referred to in Paragraph A of Part III, be increased by a surcharge for purposes of the Union, calculated at the rate of ten per cent. of such income-tax or, as the case may be, "advance tax",

and the sum so arrived at shall be the income-tax or, as the case may be, "advance tax" in respect of the total income.

(10) For the purposes of this section and the First Schedule,—

(a) "domestic company" means an Indian company or any other company which, in respect of its income liable to income-tax under the Income-tax Act for the assessment year commencing on the 1st day of April, 2000, has made the prescribed arrangements for the declaration and payment within India of the dividends (including dividends on preference shares) payable out of such income;

(b) "insurance commission" means any remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance);

(c) "net agricultural income", in relation to a person, means the total amount of agricultural income, from whatever source derived, of that person computed in accordance with the rules contained in Part IV of the First Schedule;

(d) all other words and expressions used in this section or in the First Schedule but not defined in this sub-section and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

### CHAPTER III

#### DIRECT TAXES

##### Income-tax

3. In section 2 of the Income-tax Act,—

Amendment  
of section 2.

(a) in clause (1A), the *Explanation* shall be numbered as *Explanation 1* thereof, and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted with effect from the 1st day of April, 2001, namely:—

"*Explanation 2*.—For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income;"

(b) in clause (19AA), in *Explanation 4*, for the words, brackets and figures "the conditions specified in sub-clauses (i) to (vii) of this clause, to the extent applicable", the words "such conditions as may be notified in the Official Gazette. by the Central Government" shall be substituted.

Amendment  
of section 9.

4. In section 9 of the Income-tax Act, in sub-section (1), in clause (vi), for *Explanation 3*, the following *Explanation* shall be substituted with effect from the 1st day of April, 2001, namely:—

*'Explanation 3.*—For the purposes of this clause, "computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customized electronic data;'

Amendment  
of section 10.

5. In section 10 of the Income-tax Act,—

(a) in clause (10C), with effect from the 1st day of April, 2001,—

(i) for the words "voluntary retirement, in accordance with any scheme or schemes of voluntary retirement, to the extent such amount does not exceed five lakh rupees", occurring after sub-clause (viii), the words "voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i), a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees" shall be substituted;

(ii) in the first proviso, the words, brackets and figures "and such schemes in relation to companies referred to in sub-clause (ii) or co-operative societies referred to in sub-clause (v) are approved by the Chief Commissioner or, as the case may be, Director-General in this behalf" shall be omitted;

(b) in clause (15),—

(i) in sub-clause (iv),—

(A) in item (g), for the words, brackets and figures "being a company approved by the Central Government for the purposes of clause (viii) of sub-section (1) of section 36", the words, brackets and figures "being a company eligible for deduction under clause (viii) of sub-section (1) of section 36" shall be substituted;

(B) after *Explanation 1*, the following *Explanation* shall be inserted with effect from the 1st day of April, 2001, namely:—

*'Explanation 1A.*—For the purposes of this sub-clause, the expression "interest" shall not include interest paid on delayed payment of loan or on default;'

(ii) after sub-clause (vi), the following sub-clause shall be inserted with effect from the 1st day of April, 2001, namely:—

"(vii) interest on bonds—

(a) issued by a local authority; and

(b) specified by the Central Government, by notification in the Official Gazette;";

(c) in clause (23), in the third proviso, after item (c), the following item shall be inserted with effect from the 1st day of April, 2001, namely:—

"(d) applies the amount received by way of donations referred to in clause (c) of sub-section (2) of section 80G for purposes of development of infrastructure for games or sports in India or for sponsoring of games and sports in India.";

(d) after clause (23E), the following shall be inserted with effect from the 1st day of April, 2001, namely:—

“(23EA) any income of such Investor Protection Fund set up by recognised stock exchanges in India, either jointly or separately, as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a recognised stock exchange, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall accordingly be chargeable to income-tax;”;

(e) in clause (23FA), after the second proviso, the following proviso shall be inserted with effect from the 1st day of April, 2001, namely:—

“Provided also that nothing contained in this clause shall apply in respect of any investment made after the 31st day of March, 2000;”;

(f) after clause (23FA), the following shall be inserted with effect from the 1st day of April, 2001, namely:—

“(23FB) any income of a venture capital company or venture capital fund set up to raise funds for investment in a venture capital undertaking.

*Explanation.*—For the purposes of this clause,—

(a) “venture capital company” means such company—

(i) which has been granted a certificate of registration under the Securities and Exchange Board of India Act, 1992, and regulations made thereunder;

(ii) which fulfils the conditions as may be specified, with the approval of the Central Government, by the Securities and Exchange Board of India, by notification in the Official Gazette, in this behalf;

(b) “venture capital fund” means such fund—

(i) operating under a trust deed registered under the provisions of the Registration Act, 1908;

(ii) which has been granted a certificate of registration under the Securities and Exchange Board of India Act, 1992, and regulations made thereunder;

(iii) which fulfils the conditions as may be specified, with the approval of the Central Government, by the Securities and Exchange Board of India, by notification in the Official Gazette, in this behalf; and

(c) “venture capital undertaking” means a domestic company—

(i) whose shares are not listed in a recognised stock exchange in India;

(ii) which is engaged in the business for providing services, production or manufacture of an article or thing but does not include such activities or sectors which are specified, with the approval of the Central Government, by the Securities and Exchange Board of India, by notification in the Official Gazette, in this behalf; ;

15 of 1992.

16 of 1908.

15 of 1992.

(g) in clause (23G), in *Explanation 1*,—

(i) in clause (a), for the words “in the business of developing, maintaining and operating infrastructure facility;”, the following shall be substituted, namely:—

“in the business of—

(i) developing; or

(ii) maintaining and operating; or

(iii) developing, maintaining and operating,

any infrastructure facility;”;

(ii) in clause (b), for the words “in the business of developing, maintaining and operating infrastructure facility;”, the following shall be substituted, namely:—

“in the business of—

(i) developing; or

(ii) maintaining and operating; or

(iii) developing, maintaining and operating,

any infrastructure facility;”;

(iii) in clause (c), in sub-clause (i), for the words “irrigation project, sanitation and sewerage system”, the words “irrigation project, water treatment system, solid waste management system, sanitation and sewerage system” shall be substituted with effect from the 1st day of April, 2001.

Substitution of new section for section 10A.

Special provision in respect of newly established undertakings in free trade zone, etc.

6. For section 10A of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2001, namely:—

‘10A. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee:

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to deduction referred to in this sub-section only for the unexpired period of the aforesaid ten consecutive assessment years:

Provided further that where an undertaking initially located in any free trade zone or export processing zone is subsequently located in a special economic zone by reason of conversion of such free trade zone or export processing zone into a special economic zone, the period of ten consecutive assessment years referred to in this sub-section shall be reckoned from the assessment year relevant to the previous year in which the undertaking was first set up in such free trade zone or export processing zone:

Provided also that the profits and gains derived from such domestic sales of articles or things or computer software as do not exceed twenty-five per cent. of the total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software:



Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years.

(2) This section applies to any undertaking which fulfils all the following conditions, namely:—

(i) it has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year—

(a) commencing on or after the 1st day of April, 1981, in any free trade zone; or

(b) commencing on or after the 1st day of April, 1994, in any electronic hardware technology park or, as the case may be, software technology park;

(c) commencing on or after the 1st day of April, 2001 in any special economic zone;

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence;

Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertakings as is referred to in section 33B, in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

*Explanation.*—The provisions of *Explanation 1* and *Explanation 2* to sub-section (2) of section 80-I shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(3) This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

*Explanation 1.*—For the purposes of this sub-section, the expression “competent authority” means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

*Explanation 2.*—The sale proceeds referred to in this sub-section shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the assessee.

(5) The deduction under sub-section (1) shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the

assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year,—

(i) section 32, section 32A, section 33, section 35 and clause (ix) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years, in relation to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (ii) of sub-section (3) of section 32A, clause (ii) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (ix) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;

(ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set off where such loss relates to any of the relevant assessment years;

(iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

(8) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years.

(9) Where during any previous year, the ownership or the beneficial interest in the undertaking is transferred by any means, the deduction under sub-section (1) shall not be allowed to the assessee for the assessment year relevant to such previous year and the subsequent years.

**Explanation 1.**—For the purposes of this section, in the case of a company, where on the last day of any previous year, the shares of the company carrying not less than fifty-one per cent. of the voting power are not beneficially held by persons who held the shares of the company carrying not less than fifty-one per cent. of the voting power on the last day of the year in which the undertaking was set up, the company shall be presumed to have transferred its ownership or the beneficial interest in the undertaking.

**Explanation 2.**—For the purposes of this section,—

(i) "computer software" means—

(a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(b) any customized electronic data or any product or service of similar nature, as may be notified by the Board;

which is transmitted or exported from India to any place outside India by any means;

46 of 1973.

(ii) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973, and any rules made thereunder or any other corresponding law for the time being in force;

(iii) "electronic hardware technology park" means any park set up in accordance with the Electronic Hardware Technology Park (EHTP) Scheme notified by the Government of India in the Ministry of Commerce and Industry;

(iv) "export turnover" means the consideration in respect of export of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India.

(v) "free trade zone" means the Kandla Free Trade Zone and the Santacruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette, specify for the purposes of this section;

(vi) "relevant assessment year" means any assessment year falling within a period of ten consecutive assessment years referred to in this section;

(vii) "software technology park" means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry;

(viii) "special economic zone" means a zone which the Central Government may, by notification in the Official Gazette, specify as a special economic zone for the purposes of this section.

7. For section 10B of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2001, namely:—

Substitution of new section for section 10B.

10B. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by a hundred per cent. export-oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee:

Special provisions in respect of newly established hundred per cent. export-oriented undertakings.

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to the deduction referred to in this sub-section only for the unexpired period of aforesaid ten consecutive assessment years:

Provided further that the profits and gains derived from such domestic sales of articles or things or computer software as do not exceed twenty-five per cent. of the total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software:

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years.

(2) This section applies to any undertaking which fulfils all the following conditions, namely:—

- (i) it manufactures or produces any articles or things or computer software;
- (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

- (iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

*Explanation.*—The provisions of *Explanation 1* and *Explanation 2* to sub-section (2) of section 80-I shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(3) This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

*Explanation 1.*—For the purposes of this sub-section, the expression “competent authority” means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

*Explanation 2.*—The sale proceeds referred to in this sub-section shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the assessee.

(5) The deduction under sub-section (1) shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year,—

- (i) section 32, section 32A, section 33, section 35 and clause (ix) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years, in relation to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (ii) of sub-section (3) of section 32A, clause (ii) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (ix) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;



(ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set-off where such loss relates to any of the relevant assessment years;

(iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

(8) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment year.

(9) Where during any previous year, the ownership or the beneficial interest in the undertaking is transferred by any means, the deduction under sub-section (1) shall not be allowed to the assessee for the assessment year relevant to such previous year and the subsequent years.

*Explanation 1.*—For the purposes of this section, in the case of a company, where on the last day of any previous year, the shares of the company carrying not less than fifty-one per cent. of the voting power are not beneficially held by persons who held the shares of the company carrying not less than fifty-one per cent. of the voting power on the last day of the year in which the undertaking was set up, the company shall be presumed to have transferred its ownership or the beneficial interest in the undertaking.

*Explanation 2.*—For the purposes of this section,—

(i) "computer software" means—

(a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(b) any customized electronic data or any product or service of similar nature as may be notified by the Board,

which is transmitted or exported from India to any place outside India by any means;

(ii) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973, and any rules made thereunder or any other corresponding law for the time being in force;

(iii) "export turnover" means the consideration in respect of export of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

(iv) "hundred per cent. export-oriented undertaking" means an undertaking which has been approved as a hundred per cent. export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951, and the rules made under that Act;

65 of 1951.

(v) "relevant assessment years" means any assessment years falling within a period of ten consecutive assessment years, referred to in this section.

Amendment of  
section 11.

8. In section 11 of the Income-tax Act, in sub-section (5),—

(a) in clause (vii), the following proviso shall be inserted with effect from the 1st day of April, 2001, namely:—

"Provided that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,—

(A) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company;

(B) such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;";

(b) in clauses (viii) and (ix), for the words, brackets and figures "which is approved by the Central Government for the purposes of clause (viii) of sub-section (1) of section 36", the words, brackets and figures "which is eligible for deduction under clause (viii) of sub-section (1) of section 36" shall be substituted;

(c) after clause (ix), the following shall be inserted, with effect from the 1st day of April, 2001, namely:—

'(ixa) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.

*Explanation.*—For the purposes of this clause,—

(a) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;

(b) "public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956;

1 of 1956.

(c) "urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport;".

Amendment of  
section 12.

9. Section 12 of the Income-tax Act shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following shall be inserted with effect from the 1st day of April, 2001, namely:—

'(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.

**Explanation.**—For the purposes of this sub-section, the expression “value” shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13.

10. In section 13 of the Income-tax Act, with effect from the 1st day of April, 2001, after sub-section (5), the following sub-section shall be inserted, namely:—

Amendment of section 13.

“(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), but without prejudice to the provisions contained in sub-section (2) of section 12, in the case of a charitable or religious trust running an educational institution or a medical institution or a hospital, the exemption under section 11 or section 12 shall not be denied in relation to any income, other than the income referred to in sub-section (2) of section 12, by reason only that such trust has provided educational or medical facilities to persons referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3).”

11. In section 17 of the Income-tax Act, in clause (2), with effect from the 1st day of April, 2001,—

Amendment of section 17.

(a) in sub-clause (iii) but before the *Explanation*, the following proviso shall be inserted, namely:—

“Provided that nothing contained in this sub-clause shall apply to the value of any benefit provided by a company free of cost or at a concessional rate to its employees by way of allotment of shares, debentures or warrants directly or indirectly under the Employees' Stock Option Plan or Scheme of the said company.”;

(b) sub-clause (iiia) shall be omitted.

12. In section 24 of the Income-tax Act, in sub-section (2), in the second proviso, with effect from the 1st day of April, 2001,—

Amendment of section 24.

(i) for the figures, letters and words “1st day of April, 2001”, the figures, letters and words “1st day of April, 2003” shall be substituted;

(ii) for the words “seventy-five thousand rupees”, the words “one lakh rupees” shall be substituted.

13. After section 25A of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2001, namely:—

Insertion of new section 25B.

‘25B. Where the assessee—

Special provision for arrears of rent received.

(a) is the owner of any property consisting of any buildings or lands appurtenant thereto which has been let to a tenant; and

(b) has received any amount, by way of arrears of rent from such property, not charged to income-tax for any previous year,

the amount so received, after deducting a sum equal to one-fourth of such amount for repairs of, and collection of rent from, the property, shall be deemed to be the income chargeable under the head “Income from house property” and accordingly charged to income-tax as the income of that previous year in which such rent is received, whether the assessee is the owner of that property in that year or not.”

14. In section 32 of the Income-tax Act, in sub-section (2), with effect from the 1st day of April, 2001,—

Amendment of section 32.

(a) the first proviso shall be omitted;

(b) in the existing second proviso, for the words “Provided further that”, the words “Provided that” shall be substituted.

Amendment of  
section 33AC.

**15.** In section 33AC of the Income-tax Act, in sub-section (1), after the proviso, the following proviso shall be inserted with effect from the 1st day of April, 2001, namely:—

'Provided further that for five assesment years commencing on or after the 1st day of April, 2001 and ending before the 1st day of April, 2006, the provisions of this sub-section shall have effect as if for the words "an amount not exceeding fifty per cent. of profits", the words "an amount not exceeding the profits" had been substituted.'

Amendment of  
section 35.

**16.** In section 35 of the Income-tax Act, in sub-section (2AB), in clause (1), for the words "a sum equal to one and one-fourth times of the expenditure", the words "a sum equal to one and one-half times of the expenditure" shall be substituted with effect from the 1st day of April, 2001.

Amendment of  
section 35D.

**17.** In section 35D of the Income-tax Act, in sub-section (3), in the *Explanation*, in clause (c), in sub-clause (i), for the words, brackets and figures "which is for the time being approved by the Central Government for the purposes of clause (viii) of sub-section (1) of section 36", the words, brackets and figures "which is eligible for deduction under clause (viii) of sub-section (1) of section 36" shall be substituted.

Amendment of  
section 36.

**18.** In section 36 of the Income-tax Act, in sub-section (1), in clause (viiia), in the *Explanation*, in clause (v), for the words, brackets and figures "approved by the Central Government under clause (viii) of this sub-section", the words, brackets and figures "eligible for deduction under clause (viii) of this sub-section" shall be substituted.

Amendment of  
section 43.

**19.** In section 43 of the Income-tax Act, in clause (6),—

(a) in *Explanation 2A*, for the words "book value of the assets", the words "written down value of the assets" shall be substituted;

(b) in *Explanation 2B*,—

(i) for the words "value of the assets as appearing in the books of account", the words "written down value of the transferred assets as appearing in the books of account" shall be substituted;

(ii) the proviso shall be omitted.

Amendment  
of section  
43B.

**20.** In section 43B of the Income-tax Act, in *Explanation 4*, in clause (c), for the words, brackets and figures "approved by the Central Government under clause (viii) of sub-section (1) of section 36", the words, brackets and figures "eligible for deduction under clause (viii) of sub-section (1) of section 36" shall be substituted.

Amendment of  
section 47.

**21.** In section 47 of the Income-tax Act,—

(a) after clause (iii), the following proviso shall be inserted with effect from the 1st day of April, 2001, namely:—

"Provided that this clause shall not apply to transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly or indirectly to its employees under the Employees' Stock Option Plan or Scheme;"

(b) in clause (vic), in sub-clause (a), for the words "at least seventy-five per cent. of the shareholders", the words "the shareholders holding not less than three-fourths in value of the shares" shall be substituted.

Amendment of  
section 48.

**22.** In section 48 of the Income-tax Act,—

(i) after the third proviso but before the *Explanation*, the following shall be inserted with effect from the 1st day of April, 2001, namely:—

"Provided also that where shares, debentures or warrants referred to in the proviso to clause (iii) of section 47 are transferred under a gift or an irrevocable trust, the market value on the date of such transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer for the purposes of this section."



(ii) in the *Explanation*, for clause (v), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1993, namely:—

'(v) "Cost Inflation Index", in relation to a previous year, means such Index as the Central Government may, having regard to seventy-five per cent. of average rise in the Consumer Price Index for urban non-manual employees for the immediately preceding previous year to such previous year, by notification in the Official Gazette, specify in this behalf.'

23. In section 49 of the Income-tax Act, sub-section (2B) shall be omitted with effect from the 1st day of April, 2001.

Amendment of section 49.

24. In section 50B of the Income-tax Act, for the *Explanation*, the following *Explanations* shall be substituted, namely:—

Amendment of section 50B.

*Explanation 1.*—For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account:

Provided that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.

*Explanation 2.*—For computing the net worth, the aggregate value of total assets shall be,—

(a) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of sub-clause (c) of clause (6) of section 43; and

(b) in the case of other assets, the book value of such assets.'

25. In section 54EA of the Income-tax Act, in sub-section (1), after the words "transfer of a long-term capital asset", the words, figures and letters "before the 1st day of April, 2000" shall be inserted with effect from the 1st day of April, 2001.

Amendment of section 54EA.

26. In section 54EB of the Income-tax Act, in sub-section (1), after the words "transfer of a long-term capital asset", the words, figures and letters "before the 1st day of April, 2000" shall be inserted with effect from the 1st day of April, 2001.

Amendment of section 54EB.

27. After section 54EB of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2001, namely:—

Insertion of new section 54EC.

'54EC. (1) Where the capital gain arises from the transfer of a long-term capital asset (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of capital gains in the long-term specified asset, the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

Capital gain not to be charged on investment in certain bonds.

(a) if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;

(b) if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged under section 45.

(2) Where the long-term specified asset is transferred or converted (otherwise than by transfer) into money at any time within a period of three years from the date of its acquisition, the amount of capital gains arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such long-term specified

asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1) shall be deemed to be the income chargeable under the head "Capital gains" relating to long-term capital asset of the previous year in which the long-term specified asset is transferred or converted (otherwise than by transfer) into money.

*Explanation.*—In a case where the original asset is transferred and the assessee invests the whole or any part of the capital gain received or accrued as a result of transfer of the original asset in any long-term specified asset and such assessee takes any loan or advance on the security of such specified asset, he shall be deemed to have converted (otherwise than by transfer) such specified asset into money on the date on which such loan or advance is taken.

(3) Where the cost of the long-term specified asset has been taken into account for the purposes of clause (a) or clause (b) of sub-section (1), a deduction from the amount of income-tax with reference to such cost shall not be allowed under section 88.

*Explanation.*—For the purposes of this section,—

(a) "cost", in relation to any long-term specified asset, means the amount invested in such specified asset out of capital gains received or accruing as a result of the transfer of the original asset;

(b) "long-term specified asset" means any bond redeemable after three years issued, on or after the 1st day of April, 2000, by the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 or by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988.

61 of 1981.

68 of 1988.

Amendment of  
section 54F.

28. In section 54F of the Income-tax Act, in sub-section (1), for the proviso, the following proviso shall be substituted with effect from the 1st day of April, 2001, namely:—

'Provided that nothing contained in this sub-section shall apply where—

(a) the assessee,—

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".

Amendment of  
section 72A.

29. In section 72A of the Income-tax Act, in sub-section (2), in clause (i), for the words "value of assets", the words "book value of fixed assets" shall be substituted.

Amendment of  
section 80E.

30. In section 80E of the Income-tax Act, in sub-section (1), in the proviso, for the words "twenty-five thousand rupees", the words "forty thousand rupees" shall be substituted with effect from the 1st day of April, 2001.

Amendment of  
section 80G.

31. In section 80G of the Income-tax Act, with effect from the 1st day of April, 2001,—

(a) in sub-section (1), in clause (i), after the words, brackets, figures and letter "sub-clause (vii) of clause (a)", the words, brackets and letter "or in clause (c)" shall be inserted;

(b) in sub-section (2), after clause (b), the following clause shall be inserted, namely:—

“(c) any sums paid by the assessee, being a company, in the previous year as donations to the Indian Olympic Association or to any other association or institution as notified by the Central Government under clause (23) of section 10 for—

- (i) the development of infrastructure for sports and games; or
- (ii) the sponsorship of sports and games,

in India.”;

(c) in sub-section (4), for the word, brackets and letter “clause (b)”, the words, brackets and letters “clauses (b) and (c)” shall be substituted.

32. In section 80HHB of the Income-tax Act, with effect from the 1st day of April, 2001,—

Amendment of section 80HHB.

(a) in sub-section (1), for the words “a deduction from such profits and gains of an amount equal to fifty per cent. thereof”, the following shall be substituted, namely:—

“a deduction from such profits and gains of an amount equal to—

(i) forty per cent. thereof for an assessment year beginning on the 1st day of April, 2001;

(ii) thirty per cent. thereof for an assessment year beginning on the 1st day of April, 2002;

(iii) twenty per cent. thereof for an assessment year beginning on the 1st day of April, 2003;

(iv) ten per cent. thereof for an assessment year beginning on the 1st day of April, 2004,

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year”;

(b) in sub-section (3),—

(i) in clauses (ii) and (iii), for the words, brackets and figure “fifty per cent. of the profits and gains referred to in sub-section (1)”, the words, brackets and figure “such percentage of the profits and gains as is referred to in sub-section (1) in relation to the relevant assessment year” shall be substituted;

(ii) in the proviso, for the words, brackets and figure “fifty per cent. of the profits and gains referred to in sub-section (1)”, the words, brackets and figure “such percentage of the profits and gains as is referred to in sub-section (1) in relation to the relevant assessment year” shall be substituted.

33. In section 80HHBA of the Income-tax Act, with effect from the 1st day of April, 2001,—

Amendment of section 80HHBA.

(a) in sub-section (1), for the words “a deduction from such profits and gains of an amount equal to fifty per cent. thereof”, the following shall be substituted, namely:—

“a deduction from such profits and gains of an amount equal to—

(i) forty per cent. thereof for an assessment year beginning on the 1st day of April, 2001;

(ii) thirty per cent. thereof for an assessment year beginning on the 1st day of April, 2002;

(iii) twenty per cent. thereof for an assessment year beginning on the 1st day of April, 2003;

(iv) ten per cent. thereof for an assessment year beginning on the 1st day of April, 2004;

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year”;

(b) in sub-section (2),—

(i) in clause (ii), for the words, brackets and figure “fifty per cent. of the profits and gains referred to in sub-section (1)”, the words, brackets and figure “such percentage of the profits and gains as is referred to in sub-section (1) in relation to the relevant assessment year” shall be substituted;

(ii) in the proviso, for the words, brackets and figure “fifty per cent. of the profits and gains referred to in sub-section (1)”, the words, brackets and figure “such percentage of the profits and gains as is referred to in sub-section (1) in relation to the relevant assessment year” shall be substituted.

Amendment  
of section  
80HHC.

34. In section 80HHC of the Income-tax Act, with effect from the 1st day of April, 2001,—

(a) in sub-section (1), for the words “a deduction of the profits”, the words, brackets, figure and letter “a deduction to the extent of profits, referred to in sub-section (1B),” shall be substituted;

(b) in sub-section (1A), for the words “a deduction of the profits”, the words, brackets, figure and letter “a deduction to the extent of profits, referred to in sub-section (1B),” shall be substituted;

(c) after sub-section (1A), the following sub-section shall be inserted, namely:—

“(1B) For the purposes of sub-sections (1) and (1A), the extent of deduction of the profits shall be an amount equal to—

(i) eighty per cent. thereof for an assessment year beginning on the 1st day of April, 2001;

(ii) sixty per cent. thereof for an assessment year beginning on the 1st day of April, 2002;

(iii) forty per cent. thereof for an assessment year beginning on the 1st day of April, 2003;

(iv) twenty per cent. thereof for an assessment year beginning on the 1st day of April, 2004,

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year.”

Amendment  
of section  
80HHD.

35. In section 80HHD of the Income-tax Act, in sub-section (1), for the portion beginning with the words “in computing the total income of the assessee, a deduction of a sum equal to the aggregate of—” and ending with the words, brackets and figure “manner laid down in sub-section (4)”, the following shall be substituted with effect from the 1st day of April, 2001, namely:—

“in computing the total income of the assessee—

(a) for an assessment year beginning on the 1st day of April, 2001, a deduction of a sum equal to the aggregate of—

(i) forty per cent. of the profits derived by him from services provided to foreign tourists; and

(ii) so much of the amount not exceeding forty per cent. of the profits referred to in sub-clause (i) as is debited to the profit and loss



account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4);

(b) for an assessment year beginning on the 1st day of April, 2002, a deduction of a sum equal to the aggregate of—

(i) thirty per cent. of the profits derived by him from services provided to foreign tourists; and

(ii) so much of the amount not exceeding thirty per cent. of the profits referred to in sub-clause (i) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4);

(c) for an assessment year beginning on the 1st day of April, 2003, a deduction of a sum equal to the aggregate of—

(i) twenty per cent. of the profits derived by him from services provided to foreign tourists; and

(ii) so much of the amount not exceeding twenty per cent. of the profits referred to in sub-clause (i) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4);

(d) for an assessment year beginning on the 1st day of April, 2004, a deduction of a sum equal to the aggregate of—

(i) ten per cent. of the profits derived by him from services provided to foreign tourists; and

(ii) so much of the amount not exceeding ten per cent. of the profits referred to in sub-clause (i) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4),

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year".

36. In section 80HHE of the Income-tax Act, with effect from the 1st day of April, 2001,—

Amendment  
of section  
80HHE.

(a) in sub-section (I), for the words "a deduction of the profits", the words, brackets, figure and letter "a deduction to the extent of the profits, referred to in sub-section (IB)," shall be substituted;

(b) in sub-section (IA), after the words "in respect of which the certificate has been issued by the said company", the words, brackets, figure and letter "to such extent and for such years as specified in sub-section (IB)," shall be inserted;

(c) after sub-section (IA), the following sub-section shall be inserted, namely:—

"(IB) For the purposes of sub-sections (I) and (IA), the extent of deduction of profits shall be an amount equal to—

(i) eighty per cent. of such profits for an assessment year beginning on the 1st day of April, 2001;

(ii) sixty per cent. of such profits for an assessment year beginning on the 1st day of April, 2002;

(iii) forty per cent. of such profits for an assessment year beginning on the 1st day of April, 2003;

(iv) twenty per cent. of such profits for an assessment year beginning on the 1st day of April, 2004,

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year.”;

(d) in the *Explanation* below sub-section (5), for item (b), the following shall be substituted, namely:—

“(b) “computer software” means,—

(i) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(ii) any customised electronic data or any product or service of similar nature as may be notified by the Board,

which is transmitted or exported from India to a place outside India by any means;”.

Amendment  
of section  
80HHF.

37. In section 80HHF of the Income-tax Act,—

(a) in sub-section (1),—

(i) after the words “an Indian company”, the words and brackets “or a person (other than a company) resident in India” shall be inserted;

(ii) for the words “a deduction of the profits”, the words, brackets, figure and letter “a deduction to the extent of profits, referred to in sub-section (1A),” shall be substituted with effect from the 1st day of April, 2001;

(b) after sub-section (1), the following sub-section shall be inserted with effect from the 1st day of April, 2001, namely:—

“(1A) For the purposes of sub-section (1), the extent of deduction of profits shall be an amount equal to—

(i) eighty per cent. of such profits for an assessment year beginning on the 1st day of April, 2001;

(ii) sixty per cent. of such profits for an assessment year beginning on the 1st day of April, 2002;

(iii) forty per cent. of such profits for an assessment year beginning on the 1st day of April, 2003;

(iv) twenty per cent. of such profits for an assessment year beginning on the 1st day of April, 2004,

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year.”.

Amendment  
of section  
80-IA.

38. In section 80-IA of the Income-tax Act,—

(a) in sub-section (3), for the words “any industrial undertaking”, the words, brackets and figures “an industrial undertaking referred to in clause (iv) of sub-section (4)” shall be substituted;

(b) in sub-section (4), in clause (:), in the *Explanation*, for clause (c), the

following clause shall be substituted with effect from the 1st day of April, 2001, namely:—

“(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;”

39. In section 80-IB of the Income-tax Act, with effect from the 1st day of April, 2001,—

Amendment of section 80-IB.

(a) in sub-section (3), in clause (ii), for the figures, letters and words “31st day of March, 2000”, the figures, letters and words “31st day of March, 2002” shall be substituted;

(b) in sub-section (4), in the first proviso, for the figures, letters and words “31st day of March, 2000”, the figures, letters and words “31st day of March, 2002” shall be substituted;

(c) in sub-section (5), in the second proviso to clauses (i) and (ii), for the figures, letters and words “31st day of March, 2000”, the figures, letters and words “31st day of March, 2002” shall be substituted;

(d) after sub-section (8), the following sub-section shall be inserted, namely:—

“(8A) The amount of deduction in the case of any company carrying on scientific research and development shall be hundred per cent. of the profits and gains of such business for a period of ten consecutive assessment years, beginning from the initial assessment year, if such company—

(i) is registered in India;

(ii) has its main object the scientific and industrial research and development;

(iii) is for the time being approved by the prescribed authority at any time after the 31st day of March, 2000 but before the 1st day of April, 2003;

(iv) fulfils such other conditions as may be prescribed.”;

(e) in sub-section (10),—

(i) in the opening portion, for the words “approved by a local authority”, the words, letters and figures “approved before the 31st day of March, 2001 by a local authority” shall be substituted;

(ii) in clause (a), for the figures, letters and words “31st day of March, 2001”, the figures, letters and words “31st day of March, 2003” shall be substituted.

40. In section 80L of the Income-tax Act, in sub-section (1),—

Amendment of section 80L.

(a) in clause (vii),—

(i) after the words “industrial development in India”, the words, brackets and figures “and which is eligible for deduction under clause (viii) of sub-section (1) of section 36” shall be inserted;

(ii) the proviso shall be omitted;

(b) in clause (x), for the words “for residential purposes”, the words, brackets and figures “for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36” shall be substituted.

41. In section 80-O of the Income-tax Act, for the portion beginning with the words “a deduction of an amount” and ending with the words “total income of the assessee”, the following shall be substituted with effect from the 1st day of April, 2001, namely:—

Amendment of section 80-O.

"a deduction of an amount equal to—

- (i) forty per cent. for an assessment year beginning on the 1st day of April, 2001;
- (ii) thirty per cent. for an assessment year beginning on the 1st day of April, 2002;
- (iii) twenty per cent. for an assessment year beginning on the 1st day of April, 2003;
- (iv) ten per cent. for an assessment year beginning on the 1st day of April, 2004,

of the income so received in, or brought into, India, in computing the total income of the assessee and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year".

Amendment  
of section  
80R.

42. In section 80R of the Income-tax Act, for the portion beginning with the words "a deduction from such remuneration of an amount" and ending with the words "competent authority may allow in this behalf", the following shall be substituted with effect from the 1st day of April, 2001, namely:—

"a deduction from such remuneration of an amount equal to—

- (i) sixty per cent. of such remuneration for an assessment year beginning on the 1st day of April, 2001;
- (ii) forty-five per cent. of such remuneration for an assessment year beginning on the 1st day of April, 2002;
- (iii) thirty per cent. of such remuneration for an assessment year beginning on the 1st day of April, 2003;
- (iv) fifteen per cent. of such remuneration for an assessment year beginning on the 1st day of April, 2004,

as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year".

Amendment of  
section 80RR.

43. In section 80RR of the Income-tax Act, for the portion beginning with the words "a deduction from such income of an amount" and ending with the words "competent authority may allow in this behalf", the following shall be substituted with effect from the 1st day of April, 2001, namely:—

"a deduction from such income of an amount equal to—

- (i) sixty per cent. of such income for an assessment year beginning on the 1st day of April, 2001;
- (ii) forty-five per cent. of such income for an assessment year beginning on the 1st day of April, 2002;
- (iii) thirty per cent. of such income for an assessment year beginning on the 1st day of April, 2003;
- (iv) fifteen per cent. of such income for an assessment year beginning on the 1st day of April, 2004,

as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year".



44. In section 80RRA of the Income-tax Act, for the portion beginning with the words "a deduction from such remuneration" and ending with the words "authority may allow in this behalf", the following shall be substituted with effect from the 1st day of April, 2001, namely:—

Amendment of section 80RRA.

"a deduction from such remuneration of an amount equal to—

(i) sixty per cent. of such remuneration for an assessment year beginning on the 1st day of April, 2001;

(ii) forty-five per cent. of such remuneration for an assessment year beginning on the 1st day of April, 2002;

(iii) thirty per cent. of such remuneration for an assessment year beginning on the 1st day of April, 2003;

(iv) fifteen per cent. of such remuneration for an assessment year beginning on the 1st day of April, 2004,

as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year".

45. In section 87 of the Income-tax Act, with effect from the 1st day of April, 2001,—

Amendment of section 87.

(a) in sub-section (1), for the word, figures and letter "and 88B", the figures, letters and word "88B and 88C" shall be substituted;

(b) in sub-section (2), after the words, figures and letter "or section 88B", the words, figures and letter "or section 88C" shall be inserted.

46. In section 88 of the Income-tax Act,—

Amendment of section 88.

(a) in sub-section (2), in clause (xv), in sub-clause (c), in item (5), for the words, brackets and figures "which is approved for the purposes of clause (viii) of sub-section (1) of section 36", the words, brackets and figures "which is eligible for deduction under clause (viii) of sub-section (1) of section 36" shall be substituted;

(b) in sub-section (5), for the words "ten thousand rupees", at both the places where they occur, the words "twenty thousand rupees" shall be substituted with effect from the 1st day of April, 2001;

(c) in sub-section (6), in clause (ii), for the words "fourteen thousand rupees", the words "sixteen thousand rupees" shall be substituted with effect from the 1st day of April, 2001.

47. In section 88B of the Income-tax Act, for the words "ten thousand rupees", the words "fifteen thousand rupees" shall be substituted with effect from the 1st day of April, 2001.

Amendment of section 88B.

48. After section 88B of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2001, namely:—

Insertion of new section 88C.

"88C. An assessee,—

(a) being a woman resident in India; and

(b) below the age of sixty-five years, at any time during the previous year,

Rebate of income-tax in case of women below sixty-five years.

shall be entitled to a deduction from the amount of income-tax (as computed before allowing the deductions under this Chapter) on her total income, with which she is

chargeable for any assessment year, of an amount equal to hundred per cent. of such income-tax or an amount of five thousand rupees, whichever is less.”.

Amendment  
of section 112.

49. In section 112 of the Income-tax Act, in sub-section (1),—

(a) in the proviso, for the words “being listed securities”, the words “being listed securities or unit” shall be substituted;

(b) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

‘*Explanation*.—For the purposes of this sub-section,—

(a) “listed securities” means the securities—

(i) as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956; and

32 of 1956.

(ii) listed in any recognised stock exchange in India;

(b) “unit” shall have the meaning assigned to it in clause (b) of *Explanation* to section 115AB.’.

Amendment  
of section  
115JA.

50. In section 115JA of the Income-tax Act, with effect from the 1st day of April, 2001,—

(i) in sub-section (1), after the words, figures and letters “the 1st day of April, 1997”, the words, figures and letters “but before the 1st day of April, 2001” shall be inserted;

(ii) in sub-section (2), in the *Explanation*, in item (i) below clause (f), in the proviso, after the words, figures and letters “the 1st day of April, 1997”, the words, figures and letters “but ending before the 1st day of April, 2001” shall be inserted.

Amendment  
of section  
115JAA.

51. In section 115JAA of the Income-tax Act, in sub-sections (4) and (5), after the word, figures and letters “section 115JA”, the words, figures and letters “or section 115JB, as the case may be” shall be inserted with effect from the 1st day of April, 2001.

Insertion of  
new section  
115JB.

52. After section 115JAA of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2001, namely:—

Special  
provision for  
payment of  
tax by certain  
companies.

‘115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2001, is less than seven and one-half per cent. of its book profit, the tax payable for the relevant previous year shall be deemed to be seven and one-half per cent. of such book profit.

(2) Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956:

1 of 1956.

Provided that while preparing the annual accounts including profit and loss account,—

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including profit and loss account;

(iii) the method and rates adopted for calculating the depreciation,

shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956:

1 of 1956.

1 of 1956.

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956, which is different from the previous year under this Act,—

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including profit and loss account;

(iii) the method and rates adopted for calculating the depreciation,

shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.

*Explanation.*—For the purposes of this section, “book profit” means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by—

(a) the amount of income-tax paid or payable, and the provision therefor;

or

(b) the amounts carried to any reserves, by whatever name called; or

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies;

or

(e) the amount or amounts of dividends paid or proposed; or

(f) the amount or amounts of expenditure relatable to any income to which section 10 or section 10A or section 10B or section 11 or section 12 apply,

if any amount referred to in clauses (a) to (f) is debited to the profit and loss account, and as reduced by—

(i) the amount withdrawn from any reserves or provisions if any such amount is credited to the profit and loss account:

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 2001 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this *Explanation*; or

(ii) the amount of income to which any of the provisions of section 10 or section 10A or section 10B or section 11 or section 12 apply, if any such amount is credited to the profit and loss account; or

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

*Explanation.*—For the purposes of this clause, the loss shall not include depreciation; or

(iv) the amount of profits eligible for deduction under section 80HHC, computed under clause (a) or clause (b) or clause (c) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or

(v) the amount of profits eligible for deduction under section 80HHE

computed under sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or

(vi) the amount of profits eligible for deduction under section 80HHF computed under sub-section (3) of that section, and subject to the conditions specified in that section; or

(vii) the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

1 of 1986.

*Explanation.*—For the purposes of this clause, “net worth” shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985.

1 of 1986.

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

(4) Every company to which this section applies, shall furnish a report in the prescribed form from an accountant as defined in the *Explanation* below sub-section (2) of section 288, certifying that the book profit has been computed in accordance with the provisions of this section along with the return of income filed under sub-section (1) of section 139 or along with the return of income furnished in response to a notice under clause (i) of sub-section (1) of section 142.

(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.

Amendment  
of section  
115-O.

53. In section 115-O of the Income-tax Act, in sub-section (1), for the words “ten per cent.”, the words “twenty per cent.” shall be substituted with effect from the 1st day of June, 2000.

Amendment  
of section  
115P.

54. In section 115P of the Income-tax Act, for the words “two per cent.”, the words “one and one-half per cent.” shall be substituted with effect from the 1st day of June, 2000.

Amendment  
of section  
115R.

55. In section 115R of the Income-tax Act, with effect from the 1st day of June, 2000,—

(a) in sub-sections (1) and (2), for the words “ten per cent.”, the words “twenty per cent.” shall be substituted;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) The person responsible for making payment of the income distributed by the Unit Trust of India or a Mutual Fund and the Unit Trust of India or the Mutual Fund, as the case may be, shall on or before the 15th day of September in each year, furnish to the prescribed income-tax authority, a statement in the prescribed form and verified in the prescribed manner, giving the details of the amount of income distributed to unit holders during the previous year, the tax paid thereon and such other relevant details as may be prescribed.”

Amendment  
of section  
115S.

56. In section 115S of the Income-tax Act, for the words “two per cent.”, the words “one and one-half per cent.” shall be substituted with effect from the 1st day of June, 2000.



57. After Chapter XII-E of the Income-tax Act, the following Chapter shall be inserted with effect from the 1st day of April, 2001, namely:—

Insertion of  
new Chapter  
XII-F.

#### CHAPTER XII-F

##### SPECIAL PROVISIONS RELATING TO TAX ON INCOME RECEIVED FROM VENTURE CAPITAL COMPANIES AND VENTURE CAPITAL FUNDS

115U. (1) Notwithstanding anything contained in any other provisions of this Act, any income received by a person out of investments made in a venture capital company or venture capital fund shall be chargeable to income-tax in the same manner as if it were the income received by such person had he made investments directly in the venture capital undertaking.

Tax on income  
in certain  
cases.

(2) The person responsible for making payment of the income on behalf of a venture capital company or a venture capital fund and the venture capital company or venture capital fund shall furnish, within such time as may be prescribed, to the person receiving such income and to the prescribed income-tax authority, a statement in the prescribed form and verified in the prescribed manner, giving details of the nature of the income paid during the previous year and such other relevant details as may be prescribed.

(3) The income paid by the venture capital company and the venture capital fund shall be deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it had been received by, or had accrued to, the venture capital company or the venture capital fund, as the case may be, during the previous year.

(4) The provisions of Chapter XII-D or Chapter XII-E or Chapter XVII-B shall not apply to the income paid by a venture capital company or venture capital fund under this Chapter.

*Explanation.*—For the purposes of this Chapter, "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (23FB) of section 10.

58. In section 139A of the Income-tax Act, after sub-section (1), the following sub-section shall be inserted with effect from the 1st day of June, 2000, namely:—

Amendment  
of section  
139A.

"(1A) Notwithstanding anything contained in sub-section (1), the Central Government may, by notification in the Official Gazette, specify, any class or classes of persons by whom tax is payable under this Act or any tax or duty is payable under any other law for the time being in force including importers and exporters whether any tax is payable by them or not and such persons shall, within such time as mentioned in that notification, apply to the Assessing Officer for the allotment of a permanent account number."

59. In section 158BFA of the Income-tax Act, in sub-section (3), in clause (c), after the words, brackets and figures "the Commissioner (Appeals) under section 246", the words, figures and letter "or section 246A" shall be inserted with effect from the 1st day of June, 2000.

Amendment  
of section  
158BFA.

60. In section 194A of the Income-tax Act, in sub-section (3), in clause (i), —

Amendment  
of section  
194A.

(a) for the words "two thousand five hundred rupees", the words "five thousand rupees" shall be substituted with effect from the 1st day of June, 2000;

(b) in the proviso, in clause (c), for the words "for residential purposes" the words, brackets and figures "for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36" shall be substituted.

61. In section 194L of the Income-tax Act, after the proviso, the following proviso shall be inserted with effect from the 1st day of June, 2000, namely:—

Amendment  
of section  
194L.

"Provided further that no deduction shall be made under this section from any payment made on or after the 1st day of June, 2000."

Amendment  
of section 220.

62. In section 220 of the Income-tax Act, in sub-section (6), after the words and figures "under section 246", the words, figures and letter "or section 246A" shall be inserted with effect from the 1st day of June, 2000.

Amendment  
of section  
245N.

63. In section 245N of the Income-tax Act, for clauses (a) and (b), the following clauses shall be substituted with effect from the 1st day of June, 2000, namely:—

"(a) "advance ruling" means—

(i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or

(ii) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with a non-resident,

and such determination shall include the determination of any question of law or of fact specified in the application;

(iii) a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application;

(b) "applicant" means any person who—

(i) is a non-resident referred to in sub-clause (i) of clause (a); or

(ii) is a resident referred to in sub-clause (ii) of clause (a); or

(iii) is a resident falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette, specify in this behalf; and

(iv) makes an application under sub-section (1) of section 245Q;".

Amendment  
of section  
245R.

64. In section 245R of the Income-tax Act, in sub-section (2), for the first proviso, the following proviso shall be substituted with effect from the 1st day of June, 2000, namely:—

"Provided that the Authority shall not allow the application where the question raised in the application—

(i) is already pending before any income-tax authority or Appellate Tribunal [except in the case of a resident applicant falling in sub-clause (iii) of clause (b) of section 245N] or any court;

(ii) involves determination of fair market value of any property;

(iii) relates to a transaction or issue which is designed *prima facie* for the avoidance of income-tax [except in the case of a resident applicant falling in sub-clause (iii) of clause (b) of section 245N];".

Amendment  
of section 246.

65. In section 246 of the Income-tax Act, with effect from the 1st day of June, 2000,—

(a) in sub-section (1), after the words and brackets "Deputy Commissioner (Appeals)"; the words, figures and letters "before the 1st day of June, 2000" shall be inserted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Notwithstanding anything contained in sub-section (1), every appeal filed, on or after the 1st day of October, 1998 but before the 1st day of June, 2000, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending shall stand transferred to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day.”;

(c) in sub-section (2), after the words and brackets “Commissioner (Appeals)”, the words, figures and letters “before the 1st day of June, 2000” shall be inserted.

66. In section 246A of the Income-tax Act, with effect from the 1st day of June, 2000,—

Amendment  
of section  
246A.

(i) in sub-section (1), after clause (h), the following clause shall be inserted, namely:—

“(ha) an order made under section 201;”;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Every appeal filed by an assessee in default against an order under section 201 on or after the 1st day of October, 1998 but before the 1st day of June, 2000 shall be deemed to have been filed under this section.”.

67. In section 249 of the Income-tax Act, after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of June, 2000, namely:—

Amendment  
of section 249.

“(2A) Notwithstanding anything contained in sub-section (2), where an order has been made under section 201 on or after the 1st day of October, 1998 but before the 1st day of June, 2000 and the assessee in default has not presented any appeal within the time specified in that sub-section, he may present such appeal before the 1st day of July, 2000.”.

68. In section 254 of the Income-tax Act, in sub-section (2A), after the words, brackets and figure “under sub-section (1)”, the words, brackets and figure “or sub-section (2)” shall be inserted with effect from the 1st day of June, 2000.

Amendment  
of section 254.

69. In section 267 of the Income-tax Act, after the words and figures “an appeal under section 246”, the words, figures and letter “or section 246A” shall be inserted with effect from the 1st day of June, 2000.

Amendment  
of section 267.

70. In section 275 of the Income-tax Act, in sub-section (1), in clause (a), after the words, brackets and figures “Commissioner (Appeals) under section 246”, the words, figures and letter “or section 246A” shall be inserted with effect from the 1st day of June, 2000.

Amendment  
of section 275.

71. In section 285B of the Income-tax Act, for the words “twenty-five thousand rupees”, the words “fifty thousand rupees” shall be substituted with effect from the 1st day of April, 2001.

Amendment  
of section  
285B.

#### Wealth-tax

27 of 1957.

72. In section 23 of the Wealth-tax Act, 1957 (hereinafter referred to as the Wealth-tax Act), with effect from the 1st day of June, 2000,—

Amendment  
of section 23.

(a) in sub-section (1), after the words and brackets “Deputy Commissioner (Appeals)”, the words, figures and letters “before the 1st day of June, 2000,” shall be inserted;

(b) in sub-section (1A), after the words and brackets “Commissioner (Appeals)”, the words, figures and letters “before the 1st day of June, 2000,” shall be inserted;

(c) after sub-section (1A), the following sub-section shall be inserted, namely:—

“(1AA) Notwithstanding anything contained in sub-section (1), every

appeal filed, on or after the 1st day of October, 1998, but before the 1st day of June, 2000, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending shall stand transferred to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day."

Amendment  
of section 24.

73. In section 24 of the Wealth-tax Act, in sub-section (5A), after the words, brackets and figure "under sub-section (1)", the words, brackets and figure "or sub-section (2)" shall be inserted with effect from the 1st day of June, 2000.

Amendment  
of section 31.

74. In section 31 of the Wealth-tax Act, with effect from the 1st day of June, 2000,—

(a) in sub-section (2), in the first proviso, after the words and figures "where as a result of an order under section 23.", the words, figures and letter "or section 23A," shall be inserted;

(b) in sub-section (6), after the words and figures "an appeal under section 23", the words, figures and letter "or section 23A" shall be inserted.

Amendment  
of section  
34A.

75. In section 34A of the Wealth-tax Act, in sub-section (4B), in clause (c), after the words and figures "or section 23", the words, figures and letter "or section 23A" shall be inserted with effect from the 1st day of June, 2000.

Amendment of  
section 35.

76. In section 35 of the Wealth-tax Act, in sub-section (1), in clause (c), after the words and figures "under section 23", the words, figures and letter "or section 23A" shall be inserted with effect from the 1st day of June, 2000.

#### *Interest-tax*

Amendment  
of section 4 of  
Act 45 of  
1974.

77. In the Interest-tax Act, 1974, in section 4, after sub-section (2), the following sub-section shall be inserted, with effect from the 1st day of April, 2001, namely:—

"(3) Notwithstanding anything contained in sub-sections (1) and (2), no interest-tax shall be charged in respect of any chargeable interest accruing or arising after the 31st day of March, 2000."

### CHAPTER IV

#### INDIRECT TAXES

##### *Customs*

Amendment  
of section  
27A.

78. In the Customs Act, 1962 (hereinafter referred to as the Customs Act), in section 27A, for the words "by the Board", the words "by the Central Government, by notification in the Official Gazette," shall be substituted. 52 of 1962.

Amendment  
of section 28.

79. In section 28 of the Customs Act, in sub-section (1), after the proviso and before the *Explanation*, the following provisos shall be inserted, namely:—

"Provided further that where the amount of duty which has not been levied or has been short-levied or erroneously refunded or the interest payable has not been paid, part paid or erroneously refunded is one crore rupees or less, a notice under this sub-section shall be served by the Commissioner of Customs or with his prior approval by any officer subordinate to him:

Provided also that where the amount of duty which has not been levied or has been short-levied or erroneously refunded or the interest payable thereon has not been paid, part paid or erroneously refunded is more than one crore rupees, no notice under this sub-section shall be served except with the prior approval of the Chief Commissioner of Customs."



80. In section 28AA of the Customs Act, for the words "at such rate not below ten per cent. and not exceeding thirty per cent. per annum, as is for the time being fixed by the Board", the words "at such rate not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette," shall be substituted.

Amendment of  
section 28AA.

81. In section 28AB of the Customs Act, in sub-section (1), for the words "at such rate not below ten per cent. and not exceeding thirty per cent. per annum, as is for the time being fixed by the Board", the words "at such rate not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette," shall be substituted.

Amendment of  
section 28AB.

82. In section 28B of the Customs Act, with effect from the 20th day of September, 1991,—

Amendment of  
section 28B.

(a) in sub-section (1), for the words "every person who has collected any amount from the buyer of any goods", the words "every person who is liable to pay duty under this Act and has collected any amount in excess of the duty assessed or determined or paid on any goods under this Act from the buyer of such goods" shall be substituted and shall be deemed to have been substituted;

(b) for sub-section (2), the following sub-sections shall be substituted and shall be deemed to have been substituted, namely:—

"(2) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) and which has not been so paid, the proper officer may serve on the person liable to pay such amount, a notice requiring him to show cause why he should not pay the amount, as specified in the notice to the credit of the Central Government.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (3) shall be adjusted against the duty payable by the person on finalisation of assessment or any other proceeding for determination of the duty relating to the goods referred to in sub-section (1).

(5) Where any surplus is left after the adjustment made under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 27 and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Customs for the refund of such surplus amount."

83. In section 47 of the Customs Act, in sub-section (2), for the words "at such rate, not below ten per cent. and not exceeding thirty per cent. per annum, as is for the time being fixed by the Board", the words "at such rate, not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette," shall be substituted.

Amendment of  
section 47.

84. In section 59 of the Customs Act, in sub-section (1), in clause (b), in sub-clause (ii), for the words "at the rate of six per cent. per annum or such other rate as is for the time being fixed by the Board", the words "at such rate not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette," shall be substituted.

Amendment of  
section 59.

Amendment of  
section 114A.

85. In section 114A of the Customs Act, for the first and second provisos, the following shall be substituted, namely:—

"Provided that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28AB, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AB, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

*Explanation.*—For the removal of doubts, it is hereby declared that—

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (2) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person."

Amendment of  
section 127B.

86. In section 127B of the Customs Act, in sub-section (1), in the first proviso, in clause (a), for the words "as the case may be, or", the words "as the case may be, and in relation to such bill of entry or shipping bill," shall be substituted.

Insertion of  
new section  
127MA.

87. After section 127M of the Customs Act, the following section shall be inserted, namely:—

Certain  
persons who  
have filed  
appeals to the  
Appellate  
Tribunal  
entitled to  
make  
applications to  
the Settlement  
Commission.

"127MA. (1) Notwithstanding anything contained in this Chapter, any person who has filed an appeal to the Appellate Tribunal under this Act, on or before the 29th day of February, 2000 and which is pending, shall, on withdrawal of such appeal from the Appellate Tribunal, be entitled to make an application to the Settlement Commission to have his case settled under this Chapter:

Provided that no such person shall be entitled to make an application under this section in a case where the Commissioner of Customs or any officer on his behalf has, on or before the date on which the Finance Act, 2000 receives the assent of the President, applied to the Appellate Tribunal for the determination of such points arising out of the decision or order specified by the Board in its order under sub-section (1) of section 129D or filed an appeal under sub-section (2) of section 129A, as the case may be.

(2) Any person referred to in sub-section (1) may make an application to the Appellate Tribunal for permission to withdraw the appeal.

(3) On receipt of an application under sub-section (2), the Appellate Tribunal shall grant permission to withdraw the appeal.

(4) Upon withdrawal of the appeal, the proceedings in appeal immediately before such withdrawal shall, for the purposes of this Chapter, be deemed to be a proceeding pending before a proper officer.

(5) An application to the Settlement Commission under this section shall be made within a period of thirty days from the date on which the order of the Appellate Tribunal permitting the withdrawal of the appeal is communicated to the person.

(6) An application made to the Settlement Commission under this section shall be deemed to be an application made under sub-section (1) of section 127B and the provisions of this Chapter, except sub-section (11) of section 127C, shall apply accordingly.

(7) Where an application made to the Settlement Commission under this section is not entertained by the Settlement Commission, then, the appeal shall be deemed to have been revived before the Appellate Tribunal and the provisions contained in section 129A, section 129B and section 129C shall, so far as may be, apply accordingly."

88. In section 142 of the Customs Act, in sub-section (1), after the words "under this Act", the words, figures and letter "including the amount required to be paid to the credit of the Central Government under section 28B" shall be inserted.

Amendment of  
section 142.

89. In the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act),—

Amendment of  
Act 51 of 1975.

(a) in section 9A, after sub-section (7), the following sub-section shall be inserted, namely:—

52 of 1962.

"(8) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, relating to non-levy, short levy, refunds and appeals shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.;"

(b) after section 9A, the following section shall be inserted, namely:—

'9AA. (1) Where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty:

Refund of anti-  
dumping duty  
in certain  
cases.

Provided that such importer shall not be entitled to refund of so much of such excess duty under this sub-section which is refundable under sub-section (2) of section 9A.

*Explanation.*—For the purposes of this sub-section, the expressions "margin of dumping", "export price" and "normal value" shall have the meanings respectively assigned to them in the *Explanation* to sub-section (1) of section 9A.

(2) The Central Government may, by notification in the Official Gazette, make rules to—

(i) provide for the manner in which and the time within which the importer may make an application for the purposes of sub-section (1);

(ii) authorise the officer of the Central Government who shall dispose of such application on behalf of the Central Government within the time specified in such rules; and

(iii) provide the manner in which the excess duty referred to in sub-section (I) shall be—

(A) determined by the officer referred to in clause (ii); and

(B) refunded by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, after such determination;

(c) the First Schedule shall be amended in the manner specified in the Second Schedule.

Surcharge of customs.

90. (I) In the case of goods mentioned in the First Schedule to the Customs Tariff Act, or in that Schedule, as amended from time to time, there shall be levied and collected as surcharge of customs, an amount, equal to ten per cent. of the duty chargeable on such goods calculated at the rate specified in the said First Schedule, read with any notification for the time being in force, issued by the Central Government in relation to the duty so chargeable.

(2) Sub-section (I) shall cease to have effect after the 31st day of March, 2001, and upon such cesser, section 6 of the General Clauses Act, 1897 shall apply as if the said sub-section had been repealed by a Central Act.

10 of 1897.

(3) The surcharge of customs referred to in sub-section (I) shall be in addition to any duties of customs chargeable on such goods under the Customs Act or any other law for the time being in force.

(4) The provisions of the Customs Act and the rules and regulations made thereunder, including those relating to refunds, drawbacks and exemptions from duties, shall, as far as may be, apply in relation to the levy and collection of surcharge of customs leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of customs on such goods under that Act or those rules and regulations, as the case may be.

#### Excise

Insertion of new section 2A.

91. In the Central Excise Act, 1944 (hereinafter referred to as the Central Excise Act), after section 2, the following section shall be inserted, namely:—

1 of 1944.

References of certain expressions.

"2A. In this Act, save as otherwise expressly provided and unless the context otherwise requires, references to the expressions "duty", "duties", "duty of excise" and "duties of excise" shall be construed to include a reference to "Central Value Added Tax (CENVAT)".

Amendment of section 3.

92. In the Central Excise Act, in section 3, in sub-section (I),—

(i) in clause (a), for the words "a duty of excise", the words, brackets and letters "a duty of excise, to be called the Central Value Added Tax (CENVAT)" shall be substituted;

(ii) in the proviso,—

(a) for the words and figures "under section 12 of the Customs Act, 1962", the words and figures "under the Customs Act, 1962 or any other law for the time being in force" shall be substituted and shall be deemed to have been substituted on and from the 11th day of May, 1982;

(b) for *Explanation 1*, the following *Explanation* shall be substituted and shall be deemed to have been substituted on and from the 11th day of May, 1982, namely:—

"*Explanation 1*.— Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different



rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable at the highest of those rates."

**93. In section 3A of the Central Excise Act,—**

Amendment of  
section 3A.

(a) for sub-section (2), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2000, namely:—

"(2) Where a notification is issued under sub-section (1), the Central Government may, by rules,—

(a) provide the manner for determination of the annual capacity of production of the factory, in which such goods are produced, by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity shall be deemed to be the annual production of such goods by such factory; or

(b) (i) specify the factor relevant to the production of such goods and the quantity that is deemed to be produced by use of a unit of such factor; and

(ii) provide for the determination of the annual capacity of production of the factory in which such goods are produced on the basis of such factor by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory;

Provided that where a factory producing notified goods is in operation only during a part of the year, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production:

Provided further that in a case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be redetermined on a proportionate basis having regard to such alteration or modification."

(b) in sub-section (3);—

(i) for the words "at such rate as the Central Government may by notification in the Official Gazette specify", the words "at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette, specify" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2000;

(ii) in the proviso, for the words "any continuous period of not less than seven days", the words "any continuous period of fifteen days or more" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2000;

(c) in sub-sections (4) and (5), for the words "Commissioner of Central Excise", the words "Central Excise Officer not below the rank of Joint Commissioner of Central Excise" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2000.

Substitution of  
new section for  
section 4.

Valuation of  
excisable  
goods for  
purposes of  
charging of  
duty of excise.

94. For section 4 of the Central Excise Act, the following section shall be substituted on and from the 1st day of July, 2000, namely:—

‘4. (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall—

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.

(3) For the purposes of this section,—

(a) “assessee” means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) persons shall be deemed to be “related” if—

(i) they are inter-connected undertakings;

(ii) they are relatives;

(iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or

(iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

*Explanation.*—In this clause—

(i) “inter-connected undertakings” shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969; and

64 of 1969.

(ii) “relative” shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956;

1 of 1956.

(c) “place of removal” means—

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty,

from where such goods are removed;

(d) “transaction value” means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.’

95. In section 4A of the Central Excise Act, for *Explanation 2*, the following *Explanation* shall be substituted, namely:—

Amendment of section 4A.

*"Explanation 2.—(a) Where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section.*

*(b) Where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates."*

96. In section 11 of the Central Excise Act, after the words "rules made thereunder", the words, figures and letter "including the amount required to be paid to the credit of the Central Government under section 11D" shall be inserted.

Amendment of section 11.

97. In section 11A of the Central Excise Act, in sub-section (1),—

Amendment of section 11A.

*(a) in the opening portion, for the words "erroneously refunded", the words "erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder", shall be substituted and shall be deemed to have been substituted on and from the 17th day of November, 1980;*

*(b) for the words "six months", wherever they occur, the words "one year" shall be substituted;*

*(c) after the proviso and before the Explanation, the following provisos shall be inserted, namely:—*

*"Provided further that where the amount of duty which has not been levied or paid or has been short-levied or short-paid or erroneously refunded is one crore rupees or less a notice under this sub-section shall be served by the Commissioner of Central Excise or with his prior approval by any officer subordinate to him:*

*Provided also that where the amount of duty which has not been levied or paid or has been short-levied or short-paid or erroneously refunded is more than one crore rupees, no notice under this sub-section shall be served without the prior approval of the Chief Commissioner of Central Excise."*

98. In section 11AA of the Central Excise Act, for the words "at such rate not below ten per cent. and not exceeding thirty per cent. per annum, as is for the time being fixed by the Board", the words "at such rate not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette" shall be substituted.

Amendment of section 11AA.

99. In section 11AB of the Central Excise Act, in sub-section (1), for the words "at such rate not below ten per cent. and not exceeding thirty per cent. per annum, as is for the time being fixed by the Board", the words "at such rate not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette" shall be substituted.

Amendment of section 11AB.

100. In section 11AC of the Central Excise Act, for the proviso, the following shall be substituted, namely:—

Amendment of section 11AC.

*"Provided that where such duty as determined under sub-section (2) of section 11A, and the interest payable thereon under section 11AB, is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty so determined:*

Provided further that the benefit of reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available, if the amount of duty so increased, the interest payable thereon and twenty-five per cent. of the consequential increase of penalty have also been paid within thirty days of the communication of the order by which such increase in the duty takes effect.

*Explanation.*—For the removal of doubts, it is hereby declared that—

(1) the provisions of this section shall also apply to cases in which the order determining the duty under sub-section (2) of section 11A relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(2) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person."

Amendment of  
section 11B.

**101.** In section 11B of the Central Excise Act, in sub-section (1), for the words "six months", at both the places where they occur, the words "one year" shall be substituted.

Amendment of  
section 11BB.

**102.** In section 11BB of the Central Excise Act, for the words "by the Board", the words "by the Central Government, by notification in the Official Gazette," shall be substituted.

Amendment of  
section 11D.

**103.** In section 11D of the Central Excise Act, with effect from the 20th day of September, 1991,—

(a) in sub-section (1), for the words "every person who has collected any amount from the buyer of any goods", the words "every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods" shall be substituted and shall be deemed to have been substituted;

(b) for sub-section (2), the following sub-sections shall be substituted and shall be deemed to have been substituted, namely:—

"(2) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) and which has not been so paid, the Central Excise Officer may serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

(3) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (3) shall be adjusted against the duty of excise payable by the person on finalisation of assessment or any other proceeding for



determination of the duty of excise relating to the excisable goods referred to in sub-section (1).

(5) Where any surplus is left after the adjustment under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount."

104. In section 14A of the Central Excise Act, sub-section (4) shall be omitted.

Amendment of section 14A.

105. In section 14AA of the Central Excise Act, sub-section (4) shall be omitted.

Amendment of section 14AA.

106. In section 32E of the Central Excise Act, in sub-section (1), in the first proviso, in clause (a), for the words "filed monthly returns", the words "filed returns" shall be substituted.

Amendment of section 32E.

107. After section 32P of the Central Excise Act, the following section shall be inserted, namely:--

Insertion of new section 32PA.

"32PA. (1) Notwithstanding anything contained in this Chapter, any person who has filed an appeal to the Appellate Tribunal under this Act, on or before the 29th day of February, 2000 and which is pending, shall, on withdrawal of such appeal from the Appellate Tribunal, be entitled to make an application to the Settlement Commission to have his case settled under this Chapter:

Certain persons who have filed appeals to the Appellate Tribunal entitled to make applications to the Settlement Commission.

Provided that no such person shall be entitled to make an application under this section in a case where the Commissioner of Central Excise or any officer on his behalf has, on or before the date on which the Finance Act, 2000 receives the assent of the President, applied to the Appellate Tribunal for the determination of such points arising out of the decision or order specified by the Board in its order under sub-section (1) of section 35E or filed an appeal under sub-section (2) of section 35B, as the case may be.

(2) Any person referred to in sub-section (1) may make an application to the Appellate Tribunal for permission to withdraw the appeal.

(3) On receipt of an application under sub-section (2), the Appellate Tribunal shall grant permission to withdraw the appeal.

(4) Upon withdrawal of the appeal, the proceedings in appeal immediately before such withdrawal shall, for the purposes of this Chapter, be deemed to be a proceeding pending before a Central Excise Officer.

(5) An application to the Settlement Commission under this section shall be made within a period of thirty days from the date on which the order of the Appellate Tribunal permitting the withdrawal of the appeal is communicated to the person.

(6) An application made to the Settlement Commission under this section shall be deemed to be an application made under sub-section (1) of section 32E and the provisions of this Chapter, except sub-section (1) of section 32F, shall apply accordingly.

(7) Where an application made to the Settlement Commission under this section is not entertained by the Settlement Commission, then, the appeal shall be deemed to have been revived before the Appellate Tribunal and the provisions contained in section 35B, section 35C and section 35D shall, so far as may be, apply accordingly."

Amendment of  
section 37.

**108. In section 37 of the Central Excise Act,—**

(a) in sub-section (3), for the words "two thousand rupees and that any article in respect of which any such breach is committed shall be confiscated", the words "five thousand rupees" shall be substituted;

(b) in sub-section (4), for the portion beginning with the brackets, letter and words "(d) contravenes the provisions" and ending with the words "or five thousand rupees, whichever is greater", the following shall be substituted, namely:—

"(d) contravenes the provisions of any such rule with intent to evade payment of duty;

then, all such goods shall be liable to confiscation and the manufacturer, producer or licensee shall be liable to a penalty not exceeding the duty leviable on such goods or ten thousand rupees, whichever is greater";

(c) in sub-section (5), for the words "not exceeding three times the value of such goods or five thousand rupees, whichever is greater", the words "not exceeding the duty leviable on such goods or ten thousand rupees, whichever is greater" shall be substituted.

Validation of  
action taken  
under section  
3 of Act  
1 of 1944.

**109. Any action taken or anything done or purporting to have been taken or done under sub-section (1) of section 3 of the Central Excise Act, as amended by clause (ii) of section 88 at any time during the period commencing on and from the 11th day of May, 1982 and ending with the day, the Finance Act, 2000 receives the assent of the President shall be deemed to be and to always have been, for all purposes, as validly and effectively taken or done as if the amendment made by clause (ii) of section 88 had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—**

(a) all duties of excise levied, assessed or collected during the said period on any excisable goods under the Central Excise Act, shall be deemed to be and shall be deemed to always have been, as validly levied, assessed or collected as if the amendment made by clause (ii) of section 88 had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for the refund of duties of excise, and no enforcement shall be made by any court of any decree or order directing the refund of, any such duties of excise which have been collected and which would have been validly collected if the amendment made by clause (ii) of section 88 had been in force at all material times;

(c) recovery shall be made of all such duties of excise which have not been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, if the amendment made by clause (ii) of section 88 had been in force at all material times.

**Explanation.**—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Validation of  
action taken  
under section  
11A of Act  
1 of 1944.

**110. (1) Any notice issued or served on any person under the provisions of section 11A of the Central Excise Act during the period commencing on and from the 17th day of November, 1980 and ending on the date on which the Finance Act, 2000 receives the assent of the President (hereinafter referred to as the said period) demanding duty on account of non-payment, short payment, non-levy, short-levy or erroneous refund within a period of six months or five years, as the case may be, from the relevant date as defined in clause (ii) of sub-section (3) of that section shall be deemed to be and to always have been, for all purposes, validly and effectively issued or served under that section, notwithstanding any approval, acceptance or assessment relating to the rate of duty on or value of, the**

excisable goods by any Central Excise Officer under any other provision of the Central Excise Act or the rules made thereunder.

(2) Any action taken or anything done or purporting to have been taken or done under section 11A of the Central Excise Act at any time during the said period shall be deemed to be and to have always been, for all purposes, as validly and effectively taken or done as if sub-section (1) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

(a) all duties of excise levied, assessed or collected during the period specified in sub-section (1) on any excisable goods under the Central Excise Act, shall be deemed to be and shall be deemed to always have been, as validly levied, assessed or collected as if sub-section (1) had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for the refund of, and no enforcement shall be made by any court of any decree or order directing the refund of any such duties of excise which have been collected and which would have been validly collected if sub-section (1) had been in force at all material times;

(c) recovery shall be made of all such duties of excise which have not been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, if sub-section (1) had been in force at all material times.

*Explanation.*— For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

**111. (1)** The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. GSR 829(E), dated the 29th December, 1999, which was issued in exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, granting exemption from the duty of excise or, as the case may be, from the special duty of excise on goods supplied for the official use of foreign diplomatic or consular missions in India shall be deemed to have, and to always have for all purposes validly, come into force on and from the 2nd day of December, 1997 at all material times.

Validation of exemption given to diplomatic or consular missions with retrospective effect.

(2) Refund shall be made of all such duties of excise which have been collected but which would not have been so collected if the notification referred to in sub-section (1) had been in force at all material times.

(3) Notwithstanding anything contained in section 11B of the Central Excise Act, an application for the claim of refund of the duty of excise under sub-section (2) shall be made within six months from the date on which the Finance Act, 2000 receives the assent of the President.

**112. (1)** Notwithstanding anything contained in any rule of the Central Excise Rules, 1944, no credit of any duty paid on high speed diesel oil at any time during the period commencing on and from the 16th day of March, 1995 and ending with the day, the Finance Act, 2000 receives the assent of the President, shall be deemed to be admissible.

Validation of the denial of credit of duty paid on high speed diesel oil.

(2) Any action taken or anything done or purported to have been taken or done at any time during the said period under the Central Excise Act or any rules made thereunder to deny the credit of any duty in respect of high speed diesel oil, and also to disallow such credit to be utilised for payment of any kind of duty on any excisable goods shall be deemed to be, and to always have been, for all purposes, as validly and effectively taken or done, as if the provisions of sub-section (1) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

(a) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for allowing the credit of the duty paid on high speed diesel oil and no enforcement shall be made by any court, tribunal or other authority of any decree or order allowing such credit of duty as if the provisions of sub-section (1) had been in force at all material times;

(b) recovery shall be made of all the credit of duty, which have been taken or utilised but which would not have been allowed to be taken or utilised, if the provisions of sub-section (1) had been in force at all material times, within a period of thirty days from the date on which the Finance Act, 2000 receives the assent of the President and in the event of non-payment of such credit of duty within this period, in addition to the amount of credit of such duty recoverable, interest at the rate of twenty-four per cent. per annum shall be payable, from the date immediately after the expiry of the said period of thirty days till the date of payment.

*Explanation.*—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Amendment of  
Act 5 of 1986.

113. In the Central Excise Tariff Act, 1985 (hereinafter referred to as the Central Excise Tariff Act),—

(i) the First Schedule shall be amended in the manner as specified in the Third Schedule;

(ii) the Second Schedule shall be amended in the manner as specified in the Fourth Schedule.

Amendment of  
Act 58 of  
1957.

114. The Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as the Additional Duties of Excise Act), shall be amended in the manner specified in the Fifth Schedule.

Amendment of  
Act 16 of  
1955.

115. With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, shall be amended in the manner specified in the Sixth Schedule.

## CHAPTER V

### SERVICE TAX

Amendment of  
Act 32 of  
1994.

116. During the period commencing on and from the 16th day of July, 1997 and ending with the 16th day of October, 1998, the provisions of Chapter V of the Finance Act, 1994 shall be deemed to have had effect subject to the following modifications, namely:—

(a) in section 65,—

(i) for clause (6), the following clause had been substituted, namely:—

'(6) "assessee" means a person liable for collecting the service tax and includes—

(i) his agent; or

(ii) in relation to services provided by a clearing and forwarding agent, every person who engages a clearing and forwarding agent and by whom remuneration or commission (by whatever name called) is paid for such services to the said agent; or

(iii) in relation to services provided by a goods transport operator, every person who pays or is liable to pay the freight either himself or through his agent for the transportation of goods by road in a goods carriage;';



(ii) after clause (18), the following clauses had been substituted, namely:—

59 of 1988.

(18A) "goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988;

(18B) "goods transport operator" means any commercial concern engaged in the transportation of goods but does not include a courier agency;

(iii) in clause (48), after sub-clause (m), the following sub-clause had been inserted, namely:—

"(ma) to a customer, by a goods transport operator in relation to carriage of goods by road in a goods carriage;"

(b) in section 66, for sub-section (3), the following sub-section had been substituted, namely:—

"(3) On and from the 16th day of July, 1997, there shall be levied a tax at the rate of five per cent. of the value of taxable services referred to in sub-clauses (g), (h), (i), (j), (k), (l), (m), (ma), (n) and (o) of clause (48) of section 65 and collected in such manner as may be prescribed."

(c) in section 67, after clause (k), the following clause had been inserted, namely:—

"(ka) in relation to service provided by goods transport operator to a customer, shall be the gross amount charged by such operator for services in relation to carrying goods by road in a goods carriage and includes the freight charges but does not include any insurance charges;"

117. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, sub-clauses (xii) and (xvii) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994 as they stood immediately before the commencement of the Service Tax (Amendment) Rules, 1998 shall be deemed to be valid and to have always been valid as if the said sub-clauses had been in force at all material times and accordingly,—

Validation of certain action taken under Service Tax Rules.

(i) any action taken or anything done or purported to have been taken or done at any time during the period commencing on and from the 16th day of July, 1997 and ending with the day, the Finance Act, 2000 receives the assent of the President shall be deemed to be valid and always to have been valid for all purposes, as validly and effectively taken or done;

(ii) any service tax refunded in pursuance of any judgment, decree or order of any court striking down sub-clauses (xii) and (xvii) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994 before the date on which the Finance Act, 2000 receives the assent of the President shall be recoverable within a period of thirty days from the date on which the Finance Act, 2000 receives the assent of the President, and in the event of non-payment of such service tax refunded within this period, in addition to the amount of service tax recoverable, interest at the rate of twenty-four per cent. per annum shall be payable, from the date immediately after the expiry of the said period of thirty days, till the date of payment.

**Explanation.**—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

## CHAPTER VI

## MISCELLANEOUS

Substitution of  
new section for  
section 8A of  
Act 2 of 1899.

**118.** In the Indian Stamp Act, 1899, for section 8A, the following section shall be substituted, namely:—

Securities dealt  
in depository  
not liable to  
stamp duty.

**8A.** Notwithstanding anything contained in this Act or any other law for the time being in force,—

(a) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;

(b) where an issuer issues certificate of security under sub-section (3) of section 14 of the Depositories Act, 1996, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act; 22 of 1996.

(c) the transfer of—

(i) registered ownership of securities from a person to a depository or from a depository to a beneficial owner;

(ii) beneficial ownership of securities, dealt with by a depository;

(iii) beneficial ownership of units, such units being units of a Mutual Fund including units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963, dealt with by a depository, 52 of 1963.

shall not be liable to duty under this Act or any other law for the time being in force.

*Explanation 1.*—For the purposes of this section, the expressions “beneficial ownership”, “depository” and “issuer” shall have the meanings respectively assigned to them in clauses (a), (e) and (f) of sub-section (1) of section 2 of the Depositories Act, 1996. 22 of 1996.

*Explanation 2.*—For the purposes of this section, the expression “securities” shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956. 42 of 1956.

Amendment of  
section 9 of Act  
74 of 1956.

**119.** In the Central Sales Tax Act, 1956, in section 9,—

(a) in sub-section (2), for the word “penalty”, wherever it occurs, the words “interest or penalty” shall be substituted;

(b) in sub-section (2A), for the words “provisions relating to offences and penalties”, the words “provisions relating to offences, interest and penalties” shall be substituted;

(c) after sub-section (2A), the following sub-section shall be inserted, namely:—

“(2B) If the tax payable by any dealer under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax and all the provisions for delayed payment of such tax and all the provisions relating to due date for payment of tax, rate of interest for delayed payment of tax and assessment and collection of interest for delayed payment of tax, of the general sales tax law of each State, shall apply in relation to due date for payment of tax, rate of interest for delayed payment of tax, and assessment and collection of interest for delayed payment of tax under this Act in such States as if the tax and the interest payable under this Act were a tax and an interest under such sales tax law.”;

(d) in sub-section (3), for the words "including any penalty", the words "including any interest or penalty" shall be substituted.

74 of 1956.

120. (1) The provisions of section 9 of the Central Sales Tax Act, 1956 (hereafter in this section referred to as the Central Sales Tax Act) shall have effect, and shall be deemed always to have had effect, as if that section also provided—

Validation.

(a) that all the provisions relating to interest of the general sales tax law of each State shall, with necessary modifications, apply in relation to—

(i) the assessment, re-assessment, collection and enforcement of payment of any tax required to be collected under the Central Sales Tax Act, in such State; and

(ii) any process connected with such assessment, re-assessment, collection or enforcement of payment; and

(b) that for the purposes of the application of the provisions of such law, the tax under the Central Sales Tax Act shall be deemed to be tax under such law.

(2) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, general sales tax law of any State imposed or purporting to have been imposed in pursuance of the provisions of section 9 of the Central Sales Tax Act, and all proceedings, acts or things taken or done for the purposes of, or in relation to, the imposition or collection of such interest, before the commencement of this section, shall, for all purposes, be deemed to be and to have always been imposed, taken or done as validly and effectively as if the provisions of sub-section (1) had been in force when such interest was imposed or proceedings or acts or things were taken or done and, accordingly,—

(a) no suit or other proceedings shall be maintained or continued in, or before, any court, tribunal or other authority for the refund of any amount received or realised by way of such interest;

(b) no court, tribunal or other authority shall enforce any decree or order directing the refund of any amount received or realised by way of such interest;

(c) where any amount which had been received or realised by way of such interest is refunded before the date on which the Finance Act, 2000 receives the assent of the President and such refund would not have been allowed if the provisions of sub-section (1) had been in force on the date on which the order for such refund was passed, the amount so refunded may be recovered as an arrear of tax under the Central Sales Tax Act;

(d) any proceeding, act or thing which could have been validly taken, continued or done for the imposition or collection of such interest at any time before the commencement of this section if the provisions of sub-section (1) had then been in force but which had not been taken, continued or done, may, after such commencement, be taken, continued or done.

(3) Nothing in sub-section (2) shall be construed as preventing any person—

(a) from questioning the imposition or collection of any interest or any proceedings, act or thing in connection therewith; or

(b) from claiming any refund,

in accordance with the provisions of the Central Sales Tax Act, read with sub-section (1).

*Explanation.*—For the purposes of this section, "general sales tax law" shall have the same meaning assigned to it in the Central Sales Tax Act.

Amendment  
of Act 21 of  
1998

**121.** In the Finance (No. 2) Act, 1998, with effect from the 1st day of September, 1998,—

(a) in section 88, in clause (e), in sub-clause (ii), for the words "two per cent. of the tax arrear", the words "two per cent. of the disputed chargeable interest" shall be substituted and shall be deemed to have been substituted;

(b) in section 90, in sub-section (2), for the words "within thirty days of the passing of an order by the designated authority", the words "within thirty days from the date of receipt of an order passed by the designated authority" shall be substituted and shall be deemed to have been substituted.

Amendment  
of Act 27 of  
1999

**122.** In the Finance Act, 1999, in the First Schedule, in Part III, in the opening portion, for the word, figures and letters "section 115AC", the word, figures and letters "section 115ACA" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1999.



## THE FIRST SCHEDULE

(See section 2)

## PART I

## INCOME-TAX

## Paragraph A

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

*Rates of income-tax*

- |  |  |
|--|--|
| (1) where the total income does not exceed Rs. 50,000                          | Nil;   |
| (2) where the total income exceeds Rs. 50,000 but does not exceed Rs. 60,000   | 10 per cent. of the amount by which the total income exceeds Rs. 50,000;                   |
| (3) where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000 | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 60,000;    |
| (4) where the total income exceeds Rs. 1,50,000                                | Rs. 19,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 1,50,000. |

*Surcharge on income-tax*

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph or in section 112 or section 113 shall,—

(i) in the case of every individual or Hindu undivided family or association of persons or body of individuals having a total income exceeding sixty thousand rupees, be reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, and the income-tax as so reduced,

(ii) in the case of every person, other than those mentioned in item (i),

be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax:

Provided that no such surcharge shall be payable by a non-resident:

Provided further that in case of persons mentioned in item (i) above having a total income exceeding sixty thousand rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of sixty thousand rupees by more than the amount of income that exceeds sixty thousand rupees.

## Paragraph B

In the case of every co-operative society,—

*Rates of income-tax*

- |  |   |
|--|---|
| (1) where the total income does not exceed Rs. 10,000                        | 10 per cent. of the total income;   |
| (2) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000 | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 10,000; |
| (3) where the total income exceeds Rs. 20,000                                | Rs. 3,000 plus 35 per cent. of the amount by which the total income exceeds Rs. 20,000. |

*Surcharge on income-tax*

The amount of income-tax computed in accordance with the preceding provisions of this paragraph or in section 112 or section 113, shall, in the case of every co-operative society, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax.

*Paragraph C*

In the case of every firm,—

*Rate of income-tax*

On the whole of the total income 35 per cent.

*Surcharge on income-tax*

The amount of income-tax computed at the rate hereinbefore specified, or in section 112 or section 113, shall, in the case of every firm, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax:

Provided that no such surcharge shall be payable by a non-resident.

*Paragraph D*

In the case of every local authority,—

*Rate of income-tax*

On the whole of the total income 30 per cent.

*Surcharge on income-tax*

The amount of income-tax computed at the rate hereinbefore specified, or in section 112 or section 113, shall, in the case of every local authority, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax.

*Paragraph E*

In the case of a company,—

*Rates of income-tax*

I. In the case of a domestic company 35 per cent. of the total income;

II. In the case of a company other than a domestic company,—

(i) on so much of the total income as consists of,—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976, or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government

50 per cent.;

(ii) on the balance, if any, of the total income

48 per cent.

*Surcharge on income-tax*

The amount of income-tax computed in accordance with the preceding provisions of item I of this Paragraph, or in section 112 or section 113, shall, in the case of every domestic company, be increased by a surcharge calculated at the rate of ten per cent. of such income-tax.

## PART II

## RATES FOR DEDUCTION OF TAX AT SOURCE IN CERTAIN CASES

In every case in which under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, tax is to be deducted at the rates in force, deduction shall be made from the income subject to the deduction at the following rates:—

	Rate of income-tax
1. In the case of a person other than a company—	
(a) where the person is resident in India—	
(i) on income by way of interest other than "Interest on securities"	10 per cent.;
(ii) on income by way of winnings from lotteries and crossword puzzles	40 per cent.;
(iii) on income by way of winnings from horse races	40 per cent.;
(iv) on income by way of insurance commission	10 per cent.;
(v) on income by way of interest payable on—	10 per cent.;
(A) any debentures or securities other than a security of the Central or State Government for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act;	
(B) any debentures issued by a company where such debentures are listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and any rules made thereunder	
(vi) on any other income	20 per cent.;
(b) where the person is not resident in India—	
(i) in the case of a non-resident Indian—	
(A) on any investment income	20 per cent.;
(B) on income by way of long-term capital gains referred to in section 115E	10 per cent.;
(C) on other income by way of long-term capital gains	20 per cent.;
(D) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency.	20 per cent.;
(E) on income by way of winnings from lotteries and crossword puzzles	40 per cent.;
(F) on income by way of winnings from horse races	40 per cent.;
(G) on the whole of the other income	30 per cent.;
(ii) in the case of any other person—	
(A) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent.;

(B) on income by way of winnings from lotteries and crossword puzzles	40 per cent.;
(C) on income by way of winnings from horse races	40 per cent.;
(D) on income by way of long-term capital gains	20 per cent.;
(E) on the whole of the other income	30 per cent.

2. In the case of a company—

(a) where the company is a domestic company—

(i) on income by way of interest other than "Interest on securities"	20 per cent.;
(ii) on income by way of winnings from lotteries and crossword puzzles	40 per cent.;
(iii) on income by way of winnings from horse races	40 per cent.;
(iv) on any other income.	20 per cent.;

(b) where the company is not a domestic company—

(i) on income by way of winnings from lotteries and crossword puzzles	40 per cent.;
(ii) on income by way of winnings from horse races	40 per cent.;
(iii) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent.;
(iv) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976, where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India—	

(A) where the agreement is made before the 1st day of June, 1997 30 per cent.;

(B) where the agreement is made on or after the 1st day of June, 1997 20 per cent.;

(v) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(iv)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976 50 per cent.;

(B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997 30 per cent.;



(C) where the agreement is made on or after the 1st day of June, 1997 20 per cent.;

(vi) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 29th day of February, 1964 but before the 1st day of April, 1976 50 per cent.;

(B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997 30 per cent.;

(C) where the agreement is made on or after the 1st day of June, 1997 20 per cent.;

(vii) on income by way of long-term capital gains 20 per cent.;

(viii) on any other income 48 per cent.

*Explanation.*—For the purpose of item 1(b)(i) of this Part, "investment income" and "non-resident Indian" shall have the meanings assigned to them in Chapter XII-A of the Income-tax Act.

#### *Surcharge on income-tax*

The amount of income-tax deducted in accordance with the provisions of—

(a) item 1 of this Part shall be increased by a surcharge, for purposes of the Union calculated at the rate of ten per cent. of such income-tax; and

(b) sub-item (a) of item 2 of this Part shall be increased by a surcharge calculated at the rate of ten per cent. of such income-tax.

### PART III

#### RATES FOR CHARGING INCOME-TAX IN CERTAIN CASES, DEDUCTING INCOME-TAX FROM INCOME CHARGEABLE UNDER THE HEAD "SALARIES" AND COMPUTING "ADVANCE TAX"

In cases in which income-tax has to be charged under sub-section (4) of section 172 of the Income-tax Act or sub-section (2) of section 174 or section 175 or sub-section (2) of section 176 of the said Act or deducted under section 192 of the said Act from income chargeable under the head "Salaries" or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, "advance tax" [not being "advance tax" in respect of any income chargeable to tax under Chapter XII or Chapter XII-A or section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act at the rates as specified in that Chapter or section or surcharge on such "advance tax" in respect of

any income chargeable to tax under section 115A or section 115AB or section 115AC or section 115ACA or section 115AD or section 115B or section 115BB or section 115BBA or section 115E or section 115JB] shall be charged, deducted or computed at the following rate or rates:—

*Paragraph A*

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

*Rates of income-tax*

- |  |  |
|--|--|
| (1) where the total income does not exceed Rs. 50,000                          | Nil;   |
| (2) where the total income exceeds Rs. 50,000 but does not exceed Rs. 60,000   | 10 per cent. of the amount by which the total income exceeds Rs. 50,000;                   |
| (3) where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000 | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 60,000;    |
| (4) where the total income exceeds Rs. 1,50,000                                | Rs. 19,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 1,50,000. |

*Surcharge on income-tax*

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph or in section 112 or section 113 shall,—

(i) in the case of every individual or Hindu undivided family, or association of persons or body of individuals having a total income exceeding sixty thousand rupees, be reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, and the income-tax as so reduced, be increased by a surcharge for purposes of the Union calculated—

(A) at the rate of ten per cent. of such income-tax where the total income exceeds sixty thousand rupees but does not exceed one lakh fifty thousand rupees; or

(B) at the rate of fifteen per cent. of such income-tax where the total income exceeds one lakh fifty thousand rupees;

(ii) in the case of every person other than those mentioned in item (i), be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax:

Provided that in case of persons mentioned in sub-item (A) of item (i) above having a total income exceeding sixty thousand rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of sixty thousand rupees by more than the amount of income that exceeds sixty thousand rupees:

Provided further that in case of persons mentioned in sub-item (B) of item (i) above having a total income exceeding one lakh fifty thousand rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax and surcharge on a total income of one lakh fifty thousand rupees by more than the amount of income that exceeds one lakh fifty thousand rupees.

*Paragraph B*

In the case of every co-operative society,—

*Rates of income-tax*

- |  |   |
|--|---|
| (1) where the total income does not exceed Rs. 10,000                        | 10 per cent. of the total income;   |
| (2) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000 | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 10,000; |
| (3) where the total income exceeds Rs. 20,000                                | Rs. 3,000 plus 35 per cent. of the amount by which the total income exceeds Rs. 20,000. |

*Surcharge on income-tax*

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112 or section 113, shall, in the case of every co-operative society, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax.

*Paragraph C*

In the case of every firm,—

*Rate of income-tax*

- |                                  |              |
|----------------------------------|--------------|
| On the whole of the total income | 35 per cent. |
|----------------------------------|--------------|

*Surcharge on income-tax*

The amount of income-tax computed at the rate hereinbefore specified, or in section 112 or section 113, shall, in the case of every firm, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax.

*Paragraph D*

In the case of every local authority,—

*Rate of income-tax*

- |                                  |              |
|----------------------------------|--------------|
| On the whole of the total income | 30 per cent. |
|----------------------------------|--------------|

*Surcharge on income-tax*

The amount of income-tax computed at the rate hereinbefore specified, or in section 112 or section 113, shall, in the case of every local authority, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax.

*Paragraph E*

In the case of a company,—

*Rates of income-tax*

- |   |                                   |
|---|-----------------------------------|
| I. In the case of a domestic company                        | 35 per cent. of the total income. |
| II. In the case of a company other than a domestic company— |                                   |

(i) on so much of the total income as consists of—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976, or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government

50 per cent.;

(ii) on the balance, if any, of the total income

48 per cent.;

#### *Surcharge on income-tax*

The amount of income-tax computed in accordance with the preceding provisions of item I of this Paragraph, or in section 112 or section 113, shall, in the case of every domestic company, be increased by a surcharge calculated at the rate of ten per cent. of such income-tax.

### PART IV

[See section 2(10)(c)]

#### RULES FOR COMPUTATION OF NET AGRICULTURAL INCOME

**Rule 1.**—Agricultural income of the nature referred to in sub-clause (a) of clause (1A) of section 2 of the Income-tax Act shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from other sources" and the provisions of sections 57 to 59 of that Act shall, so far as may be, apply accordingly:

Provided that sub-section (2) of section 58 shall apply subject to the modification that the reference to section 40A therein shall be construed as not including a reference to sub-sections (3) and (4) of section 40A.

**Rule 2.**—Agricultural income of the nature referred to in sub-clause (b) or sub-clause (c) of clause (1A) of section 2 of the Income-tax Act [other than income derived from any building required as a dwelling house by the receiver of the rent or revenue of the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c)] shall be computed as if it were income chargeable to income-tax under that Act under the head "Profits and gains of business or profession" and the provisions of sections 30, 31, 32, 36, 37, 38, 40, 40A [other than sub-sections (3) and (4) thereof], 41, 43, 43A, 43B and 43C of the Income-tax Act shall, so far as may be, apply accordingly.

**Rule 3.**—Agricultural income of the nature referred to in sub-clause (c) of clause (1A) of section 2 of the Income-tax Act, being income derived from any building required as a dwelling house by the receiver of the rent or revenue or the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c) shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from house property" and the provisions of sections 23 to 27 of that Act shall, so far as may be, apply accordingly.

**Rule 4.**—Notwithstanding anything contained in any other provisions of these rules, in a case where the assessee derives income from sale of tea grown and manufactured by him in India, such income shall be computed in accordance with rule 8 of the Income-tax Rules, 1962, and sixty per cent. of such income shall be regarded as the agricultural income of the assessee.



**Rule 5.**—Where the assessee is a member of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) which in the previous year has either no income chargeable to tax under the Income-tax Act or has total income not exceeding the maximum amount not chargeable to tax in the case of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) but has any agricultural income, then, the agricultural income or loss of the association or body shall be computed in accordance with these rules and the share of the assessee in the agricultural income or loss so computed shall be regarded as the agricultural income or loss of the assessee.

**Rule 6.**—Where the result of the computation for the previous year in respect of any source of agricultural income is a loss, such loss shall be set off against the income of the assessee, if any, for that previous year from any other source of agricultural income:

Provided that where the assessee is a member of an association of persons or a body of individuals and the share of the assessee in the agricultural income of the association or body, as the case may be, is a loss, such loss shall not be set off against any income of the assessee from any other source of agricultural income.

**Rule 7.**—Any sum payable by the assessee on account of any tax levied by the State Government on the agricultural income shall be deducted in computing the agricultural income.

**Rule 8.**—(1) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2000, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1992 or the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999, is a loss, then, for the purposes of sub-section (2) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1992, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1993, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1994, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1995, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set

off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998 or the 1st day of April, 1999,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1999,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1999,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2000.

(2) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2001 or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than that previous year, in such other period, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000, is a loss, then, for the purposes of sub-section (9) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1993, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1994, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1995, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year

commencing on the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1999 or the 1st day of April, 2000;

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1999, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2000,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2000,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2001.

(3) Where any person deriving any agricultural income from any source has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in sub-rule (1) or sub-rule (2) shall entitle any person, other than the person incurring the loss, to have it set off under sub-rule (1) or, as the case may be, sub-rule (2).

(4) Notwithstanding anything contained in this rule, no loss which has not been determined by the Assessing Officer under the provisions of these rules or the rules contained in Part IV of the First Schedule to the Finance Act, 1992 (18 of 1992), or of the First Schedule to the Finance Act, 1993 (38 of 1993), or of the First Schedule to the Finance Act, 1994 (32 of 1994), or of the First Schedule to the Finance Act, 1995 (22 of 1995), or of the First Schedule to the Finance (No. 2) Act, 1996 (33 of 1996), or of the First Schedule to the Finance Act, 1997 (26 of 1997), or of the First Schedule to the Finance (No. 2) Act, 1998 (21 of 1998), or of the First Schedule to the Finance Act, 1999 (27 of 1999), shall be set off under sub-rule (1) or, as the case may be, sub-rule (2).

**Rule 9.**—Where the net result of the computation made in accordance with these rules is a loss, the loss so computed shall be ignored and the net agricultural income shall be deemed to be nil.

**Rule 10.**—The provisions of the Income-tax Act relating to procedure for assessment (including the provisions of section 288A relating to rounding off of income) shall, with the necessary modifications, apply in relation to the computation of the net agricultural income of the assessee as they apply in relation to the assessment of the total income.

**Rule 11.**—For the purposes of computing the net agricultural income of the assessee, the Assessing Officer shall have the same powers as he has under the Income-tax Act for the purposes of assessment of the total income.

## THE SECOND SCHEDULE

[See section 89(c)]

In the First Schedule to the Customs Tariff Act,—

(1) in Chapter 1, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(2) in Chapter 2,—

(i) for the entry in column (4) occurring against all sub-heading Nos. (except sub-heading Nos. 0207.13 and 0207.14), the entry "35%" shall be substituted;

(ii) in sub-heading Nos. 0207.13 and 0207.14, for the entry in column (4), the entry "100%" shall be substituted;

(3) in Chapter 3, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(4) in Chapter 4,—

(i) in sub-heading Nos. 0402.10 and 0402.21, for the entry in column (4) occurring against each of them, the entry "60%" shall be substituted;

(ii) in sub-heading Nos. 0405.10 and 0406.90, for the entry in column (4) occurring against each of them, the entry "40%" shall be substituted;

(5) in Chapter 5, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(6) in Chapter 6,—

(i) in sub-heading Nos. 0601.10, 0601.20, 0602.10, 0602.20, 0602.30, 0602.40 and 0602.90, for the entry in column (4) occurring against each of them, the entry "10%" shall be substituted;

(ii) in sub-heading Nos. 0603.10, 0603.90, 0604.10, 0604.91 and 0604.99, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(7) in Chapter 7,—

(i) for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading No. 0713.10), the entry "35%" shall be substituted;

(ii) in sub-heading No. 0713.10, for the entry in column (4), the entry "50%" shall be substituted;

(8) in Chapter 8,—

(i) for the entries in column (4) and column (5) occurring against all the sub-heading Nos. (except sub-heading Nos. 0801.31, 0802.11, 0802.12, 0804.10, 0805.10, 0805.30, 0805.40, 0806.10, 0806.20, 0808.10, 0808.20, 0809.40, 0810.90 and 0813.20), the entries "35%" and "25%" shall respectively be substituted;

(ii) in sub-heading No. 0801.31, for the entry in column (4), the entry "35%" shall be substituted;

(iii) in sub-heading No. 0802.11, for the entry in column (4), the entry "Rs. 35 per kg." shall be substituted;

(iv) in sub-heading No. 0805.40, for the entry in column (4), the entry "25%" shall be substituted;

(v) in sub-heading No. 0806.10, for the entry in column (4), the entry "40%" shall be substituted;

(vi) in sub-heading No. 0806.20, for the entries in column (4) and column (5), the entries "115%" and "105%" shall respectively be substituted;

(vii) in sub-heading No. 0808.10, for the entry in column (4), the entry "50%" shall be substituted;



(viii) in sub-heading No. 0808.20, for the entry in column (4), the entry "35%" shall be substituted;

(ix) in sub-heading No. 0810.90, for the entry in column (4), the entry "35%" shall be substituted;

(x) in sub-heading No. 0813.20, for the entry in column (4), the entry "25%" shall be substituted;

(9) in Chapter 9,—

(i) for the entries in column (4) and column (5) occurring against sub-heading Nos. 0901.11, 0901.12, 0901.21, 0901.22 and 0901.90, the entries "35%" and "35% less 13 paise per kg." shall respectively be substituted;

(ii) for the entries in column (4) and column (5) occurring against sub-heading Nos. 0902.10, 0902.20, 0902.30 and 0902.40, the entries "35%" and "35% less 26 paise per kg." shall respectively be substituted;

(10) in Chapter 10,—

(i) in sub-heading Nos. 1001.10 and 1001.90, for the entry in column (4) occurring against each of them, the entry "100%" shall be substituted;

(ii) in sub-heading No. 1005.10, for the entry in column (4), the entry "70%" shall be substituted;

(iii) in sub-heading No. 1005.90, for the entry in column (4), the entry "60%" shall be substituted;

(iv) in sub-heading Nos. 1006.10 and 1006.20, for the entry in column (4) occurring against each of them, the entry "80%" shall be substituted;

(v) in sub-heading No. 1006.30, for the entry in column (4), the entry "70%" shall be substituted;

(vi) in sub-heading Nos. 1006.40 and 1007.00, for the entry in column (4) occurring against each of them, the entry "80%" shall be substituted;

(vii) in sub-heading No. 1008.20, for the entry in column (4), the entry "70%" shall be substituted;

(11) in Chapter 11, in sub-heading No. 1107.10, for the entry in column (4), the entry "40%" shall be substituted;

(12) in Chapter 12,—

(i) for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 1201.00, 1202.10, 1202.20, 1203.00, 1204.00, 1205.00, 1206.00, 1207.10, 1207.20, 1207.30, 1207.40, 1207.50, 1207.60, 1207.91, 1207.92, 1207.99, 1209.91 and 1209.99), the entry "35%" shall be substituted;

(ii) in sub-heading Nos. 1201.00, 1202.10, 1202.20, 1203.00, 1204.00, 1205.00, 1206.00, 1207.10, 1207.20, 1207.30, 1207.40, 1207.50, 1207.60, 1207.91, 1207.92 and 1207.99, for the entries in column (4) and column (5) occurring against each of them, the entries "35%" and "25%" shall respectively be substituted;

(iii) in sub-heading Nos. 1209.91 and 1209.99, for the entry in column (4) occurring against each of them, the entry "10%" shall be substituted;

(13) in Chapter 13,—

(i) for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading No. 1301.20), the entry "35%" shall be substituted;

(ii) in sub-heading No. 1301.20, for the entries in column (4) and column (5), the entries "35%" and "25%" shall respectively be substituted;

(14) in Chapter 14, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(15) in Chapter 15,—

(i) in sub-heading Nos. 1505.10 and 1505.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(ii) in sub-heading Nos. 1507.10 and 1507.90, for the entry in column (4) occurring against each of them, the entry "45%" shall be substituted;

(iii) in sub-heading Nos. 1508.10 and 1508.90, for the entry in column (4) occurring against each of them, the entry "100%" shall be substituted;

(iv) in sub-heading No. 1509.10, for the entry in column (4), the entry "45%" shall be substituted;

(v) in sub-heading No. 1509.90, for the entry in column (4), the entry "40%" shall be substituted;

(vi) in sub-heading No. 1510.00, for the entry in column (4), the entry "45%" shall be substituted;

(vii) in sub-heading Nos. 1511.10, 1511.90, 1512.11, 1512.19, 1512.21, 1512.29, 1513.11, 1513.19, 1513.21 and 1513.29, for the entry in column (4) occurring against each of them, the entry "100%" shall be substituted;

(viii) in sub-heading Nos. 1514.10 and 1514.90, for the entry in column (4) occurring against each of them, the entry "75%" shall be substituted;

(ix) in sub-heading Nos. 1515.11, 1515.19, 1515.21, 1515.29, 1515.30, 1515.40, 1515.50, 1515.60 and 1515.90, for the entry in column (4) occurring against each of them, the entry "100%" shall be substituted;

(16) in Chapter 16,—

(i) for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 1601.00 and 1602.32), the entry "35%" shall be substituted;

(ii) in sub-heading Nos. 1601.00 and 1602.32, for the entry in column (4), the entry "100%" shall be substituted;

(17) in Chapter 17,—

(i) for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 1701.11, 1701.12, 1701.91, 1701.99 and 1704.10), the entry "35%" shall be substituted;

(ii) in sub-heading Nos. 1701.11, 1701.12, 1701.91 and 1701.99, for the entry in column (4) occurring against each of them, the entry "100%" shall be substituted;

(iii) in sub-heading No. 1704.10, for the entry in column (4), the entry "45%" shall be substituted;

(18) in Chapter 18, for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading No. 1801.00), the entry "35%" shall be substituted;

(19) in Chapter 19,—

(i) for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 1901.10 and 1905.30), the entry "35%" shall be substituted;

(ii) in sub-heading No. 1901.10, for the entry in column (4), the entry "50%" shall be substituted;

(iii) in sub-heading No. 1905.30, for the entry in column (4), the entry "45%" shall be substituted;

(20) in Chapter 20, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(21) in Chapter 21,—

(i) for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading No. 2106.90), the entry "35%" shall be substituted;

(ii) in sub-heading No. 2106.90, for the entry in column (4), the entry "170%" shall be substituted;

(22) in Chapter 22,—

(i) in sub-heading Nos. 2201.10, 2201.90, 2202.10 and 2202.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(ii) in sub-heading No. 2207.10, for the entry in column (4), the entry "210%" shall be substituted;

(iii) in sub-heading No. 2207.20, for the entry in column (4), the entry "35%" shall be substituted;

(iv) in sub-heading Nos. 2208.20, 2208.30, 2208.40, 2208.50, 2208.60, 2208.70 and 2208.90, for the entry in column (4) occurring against each of them, the entry "210%" shall be substituted;

(v) in sub-heading No. 2209.00, for the entry in column (4), the entry "35%" shall be substituted;

(23) in Chapter 23, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(24) in Chapter 24, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(25) in Chapter 25, in sub-heading Nos. 2515.11, 2515.12, 2515.20, 2516.11, 2516.12, 2516.21, 2516.22, 2516.90, 2519.10, 2519.90, 2523.10, 2523.21, 2523.29, 2523.30 and 2523.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(26) in Chapter 27,—

(i) in sub-heading No. 2701.11, for the entry in column (4), the entry "25%" shall be substituted;

(ii) in sub-heading No. 2701.12, for the entry in column (4), the entry "55%" shall be substituted;

(iii) in sub-heading No. 2701.19, for the entry in column (4), the entry "25%" shall be substituted;

(iv) in sub-heading No. 2709.00, for the entry in column (4), the entry "15%" shall be substituted;

(v) in sub-heading No. 2710.00, for the entry in column (4), the entry "35%" shall be substituted;

(vi) in sub-heading Nos. 2712.10, 2712.20, 2712.90, 2713.12, 2713.20, 2713.90 and 2715.00, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(27) in Chapter 28, in sub-heading No. 2823.00, for the entry in column (4), the entry "35%" shall be substituted;

(28) in Chapter 29, in sub-heading No. 2918.14, for the entry in column (4), the entry "35%" shall be substituted;

(29) in Chapter 32, in sub-heading Nos. 3206.11 and 3206.19, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(30) in Chapter 33,—

(i) for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading No. 3302.10), the entry "35%" shall be substituted;

(ii) in sub-heading No. 3302.10, for the entry in column (4), the entry "170%" shall be substituted;

(31) in Chapter 34,—

(i) for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 3402.11, 3402.12, 3402.13 and 3402.19), the entry "35%" shall be substituted;

(ii) in sub-heading Nos. 3402.11, 3402.12, 3402.13 and 3402.19, for the entries in column (4) and column (5) occurring against each of them, the entries "35%" and "25%" shall respectively be substituted;

(32) in Chapter 37, in sub-heading Nos. 3702.32, 3702.39, 3702.42, 3702.43 and 3702.44, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(33) in Chapter 38,—

(i) in sub-heading No. 3818.00, for the entry in column (4), the entry "Free" shall be substituted;

(ii) in sub-heading No. 3823.70, for the entry in column (4), the entry "50%" shall be substituted;

(34) in Chapter 40, for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 4001.21, 4001.22, 4001.29 and 4011.30), the entry "35%" shall be substituted;

(35) in Chapter 42, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(36) in Chapter 43, in sub-heading Nos. 4303.10, 4303.90 and 4304.00, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(37) in Chapter 44, in sub-heading Nos. 4410.11, 4410.19, 4410.90, 4411.11, 4411.19, 4411.21, 4411.29, 4411.31, 4411.39, 4411.91 and 4411.99, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(38) in Chapter 46, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(39) in Chapter 47, in sub-heading Nos. 4707.10, 4707.20, 4707.30 and 4707.90, for the entry in column (4) occurring against each of them, the entry "15%" shall be substituted;

(40) in Chapter 48, in sub-heading Nos. 4812.00, 4813.10, 4813.20, 4813.90, 4814.10, 4814.20, 4814.30, 4814.90, 4815.00, 4816.10, 4816.20, 4816.30, 4816.90, 4817.10, 4817.20, 4817.30, 4818.10, 4818.20, 4818.30, 4818.40, 4818.50, 4818.90, 4819.10, 4819.20, 4819.30, 4819.40, 4819.50, 4819.60, 4820.10, 4820.20, 4820.30, 4820.40, 4820.50, 4820.90, 4821.10, 4821.90, 4822.10, 4822.90, 4823.11, 4823.19, 4823.40, 4823.51, 4823.59, 4823.60, 4823.70 and 4823.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(41) in Chapter 51,—

(i) in sub-heading Nos. 5101.21 and 5101.30, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(ii) in sub-heading Nos. 5105.10, 5105.21, 5105.29, 5105.30, 5105.40, 5106.10, 5106.20, 5107.10, 5107.20, 5108.10 and 5108.20, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(iii) in sub-heading Nos. 5109.10, 5109.90 and 5110.00, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(iv) in sub-heading No. 5111.11, for the entry in column (4), the entry "30% or Rs. 155 per sq. mtr., whichever is higher" shall be substituted;

(v) in sub-heading No. 5111.19, for the entry in column (4), the entry "30% or Rs. 170 per sq. mtr., whichever is higher" shall be substituted;

(vi) in sub-heading No. 5111.20, for the entry in column (4), the entry "30% or Rs. 90 per sq. mtr., whichever is higher" shall be substituted;

(vii) in sub-heading No. 5111.30, for the entry in column (4), the entry "30% or Rs. 85 per sq. mtr., whichever is higher" shall be substituted;

(viii) in sub-heading No. 5111.90, for the entry in column (4), the entry "30% or Rs. 105 per sq. mtr., whichever is higher" shall be substituted;



(ix) in sub-heading No. 5112.11, for the entry in column (4), the entry "30% or Rs. 145 per sq. mtr., whichever is higher" shall be substituted;

(x) in sub-heading No. 5112.19, for the entry in column (4), the entry "30% or Rs. 175 per sq. mtr., whichever is higher" shall be substituted;

(xi) in sub-heading No. 5112.20, for the entry in column (4), the entry "30% or Rs. 95 per sq. mtr., whichever is higher" shall be substituted;

(xii) in sub-heading No. 5112.30, for the entry in column (4), the entry "30% or Rs. 130 per sq. mtr., whichever is higher" shall be substituted;

(xiii) in sub-heading No. 5112.90, for the entry in column (4), the entry "30% or Rs. 155 per sq. mtr., whichever is higher" shall be substituted;

(xiv) in sub-heading No. 5113.00, for the entry in column (4), the entry "35% or Rs. 60 per sq. mtr., whichever is higher" shall be substituted;

(42) in Chapter 52,—

(i) in sub-heading No. 5203.00, for the entry in column (4), the entry "35%" shall be substituted;

(ii) in sub-heading Nos. 5204.11, 5204.19, 5204.20, 5205.11, 5205.12, 5205.13, 5205.14, 5205.15, 5205.21, 5205.22, 5205.23, 5205.24, 5205.26, 5205.27, 5205.28, 5205.31, 5205.32, 5205.33, 5205.34, 5205.35, 5205.41, 5205.42, 5205.43, 5205.44, 5205.46, 5205.47, 5205.48, 5206.11, 5206.12, 5206.13, 5206.14, 5206.15, 5206.21, 5206.22, 5206.23, 5206.24, 5206.25, 5206.31, 5206.32, 5206.33, 5206.34, 5206.35, 5206.41, 5206.42, 5206.43, 5206.44 and 5206.45, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(iii) in sub-heading Nos. 5207.90, 5208.11, 5208.12, 5208.13, 5208.19, 5208.21, 5208.22, 5208.23, 5208.29, 5208.31, 5208.32, 5208.33 and 5208.39, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(iv) in sub-heading No. 5208.41, for the entry in column (4), the entry "30% or Rs. 9 per sq. mtr., whichever is higher" shall be substituted;

(v) in sub-heading No. 5208.42, for the entry in column (4), the entry "30% or Rs. 27 per sq. mtr., whichever is higher" shall be substituted;

(vi) in sub-heading No. 5208.43, for the entry in column (4), the entry "35%" shall be substituted;

(vii) in sub-heading No. 5208.49, for the entry in column (4), the entry "35% or Rs. 200 per kg., whichever is higher" shall be substituted;

(viii) in sub-heading No. 5208.51, for the entry in column (4), the entry "30% or Rs. 27 per sq. mtr., whichever is higher" shall be substituted;

(ix) in sub-heading No. 5208.52, for the entry in column (4), the entry "30% or Rs. 14 per sq. mtr., whichever is higher" shall be substituted;

(x) in sub-heading No. 5208.53, for the entry in column (4), the entry "30% or Rs. 21 per sq. mtr., whichever is higher" shall be substituted;

(xi) in sub-heading No. 5208.59, for the entry in column (4), the entry "30% or Rs. 36 per sq. mtr., whichever is higher" shall be substituted;

(xii) in sub-heading Nos. 5209.11, 5209.12, 5209.19, 5209.21, 5209.22, 5209.29, 5209.31, 5209.32 and 5209.39, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xiii) in sub-heading No. 5209.41, for the entry in column (4), the entry "35% or Rs. 145 per kg., whichever is higher" shall be substituted;

(xiv) in sub-heading No. 5209.42, for the entry in column (4), the entry "30% or Rs. 30 per sq. mtr., whichever is higher" shall be substituted;

(xv) in sub-heading No. 5209.43, for the entry in column (4), the entry "35% or Rs. 145 per kg., whichever is higher" shall be substituted;

- (xvi) in sub-heading No. 5209.49, for the entry in column (4), the entry "35%" shall be substituted;
- (xvii) in sub-heading Nos. 5209.51 and 5209.52, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 24 per sq. mtr., whichever is higher" shall be substituted;
- (xviii) in sub-heading No. 5209.59, for the entry in column (4), the entry "30% or Rs. 50 per sq. mtr., whichever is higher" shall be substituted;
- (xix) in sub-heading Nos. 5210.11, 5210.12, 5210.19, 5210.21, 5210.22, 5210.29, 5210.31, 5210.32 and 5210.39, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;
- (xx) in sub-heading No. 5210.41, for the entry in column (4), the entry "30% or Rs. 15 per sq. mtr., whichever is higher" shall be substituted;
- (xxi) in sub-heading No. 5210.42, for the entry in column (4), the entry "35% or Rs. 165 per kg., whichever is higher" shall be substituted;
- (xxii) in sub-heading No. 5210.49, for the entry in column (4), the entry "35% or Rs. 185 per kg., whichever is higher" shall be substituted;
- (xxiii) in sub-heading No. 5210.51, for the entry in column (4), the entry "30% or Rs. 12 per sq. mtr., whichever is higher" shall be substituted;
- (xxiv) in sub-heading No. 5210.52, for the entry in column (4), the entry "30% or Rs. 15 per sq. mtr., whichever is higher" shall be substituted;
- (xxv) in sub-heading No. 5210.59, for the entry in column (4), the entry "30% or Rs. 12 per sq. mtr., whichever is higher" shall be substituted;
- (xxvi) in sub-heading Nos. 5211.11, 5211.12, 5211.19, 5211.21, 5211.22, 5211.29, 5211.31, 5211.32 and 5211.39, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;
- (xxvii) in sub-heading No. 5211.41, for the entry in column (4), the entry "35% or Rs. 155 per kg., whichever is higher" shall be substituted;
- (xxviii) in sub-heading No. 5211.42, for the entry in column (4), the entry "30% or Rs. 18 per sq. mtr., whichever is higher" shall be substituted;
- (xxix) in sub-heading No. 5211.43, for the entry in column (4), the entry "35% or Rs. 165 per kg., whichever is higher" shall be substituted;
- (xxx) in sub-heading No. 5211.49, for the entry in column (4), the entry "35%" shall be substituted;
- (xxxi) in sub-heading Nos. 5211.51, 5211.52 and 5211.59, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 12 per sq. mtr., whichever is higher" shall be substituted;
- (xxxii) in sub-heading Nos. 5212.11, 5212.12, 5212.13 and 5212.14, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;
- (xxxiii) in sub-heading No. 5212.15, for the entry in column (4), the entry "35% or Rs. 165 per kg., whichever is higher" shall be substituted;
- (xxxiv) in sub-heading Nos. 5212.21, 5212.22 and 5212.23, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;
- (xxxv) in sub-heading No. 5212.24, for the entry in column (4), the entry "30% or Rs. 20 per sq. mtr., whichever is higher" shall be substituted;
- (xxxvi) in sub-heading No. 5212.25, for the entry in column (4), the entry "35% or Rs. 165 per kg., whichever is higher" shall be substituted;
- (43) in Chapter 53, in sub-heading Nos. 5306.10, 5306.20, 5307.10, 5307.20, 5308.10, 5308.20, 5308.30, 5308.90, 5309.11, 5309.19, 5309.21, 5309.29, 5310.10, 5310.90 and 5311.00, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(44) in Chapter 54,—

(i) in sub-heading Nos. 5401.10, 5401.20, 5402.10, 5402.20, 5402.31, 5402.32, 5402.33, 5402.39, 5402.41, 5402.42, 5402.43, 5402.49, 5402.51, 5402.52, 5402.59, 5402.61, 5402.62, 5402.69, 5403.10, 5403.20, 5403.31, 5403.32, 5403.33, 5403.39, 5403.41, 5403.42, 5403.49, 5404.10, 5404.90, 5405.00, 5406.10 and 5406.20, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(ii) in sub-heading No. 5407.10, for the entry in column (4), the entry "25% or Rs. 115 per kg., whichever is higher" shall be substituted;

(iii) in sub-heading Nos. 5407.20 and 5407.30, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(iv) in sub-heading No. 5407.41, for the entry in column (4), the entry "25% or Rs. 150 per kg., whichever is higher" shall be substituted;

(v) in sub-heading Nos. 5407.42, 5407.43 and 5407.44, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 250 per kg., whichever is higher" shall be substituted;

(vi) in sub-heading No. 5407.51, for the entry in column (4), the entry "30% or Rs. 11 per sq. mtr., whichever is higher" shall be substituted;

(vii) in sub-heading Nos. 5407.52, 5407.53 and 5407.54, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 225 per kg., whichever is higher" shall be substituted;

(viii) in sub-heading No. 5407.61, for the entry in column (4), the entry "25%" shall be substituted;

(ix) in sub-heading No. 5407.69, for the entry in column (4), the entry "35%" shall be substituted;

(x) in sub-heading No. 5407.71, for the entry in column (4), the entry "25% or Rs. 10 per sq. mtr., whichever is higher" shall be substituted;

(xi) in sub-heading No. 5407.72, for the entry in column (4), the entry "25% or Rs. 265 per kg., whichever is higher" shall be substituted;

(xii) in sub-heading No. 5407.73, for the entry in column (4), the entry "30% or Rs. 205 per kg., whichever is higher" shall be substituted;

(xiii) in sub-heading No. 5407.74, for the entry in column (4), the entry "30% or Rs. 310 per kg., whichever is higher" shall be substituted;

(xiv) in sub-heading No. 5407.81, for the entry in column (4), the entry "30% or Rs. 10 per sq. mtr., whichever is higher" shall be substituted;

(xv) in sub-heading Nos. 5407.82, 5407.83 and 5407.84, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 225 per kg., whichever is higher" shall be substituted;

(xvi) in sub-heading No. 5407.91, for the entry in column (4), the entry "30% or Rs. 15 per sq. mtr., whichever is higher" shall be substituted;

(xvii) in sub-heading No. 5407.92, for the entry in column (4), the entry "30% or Rs. 225 per kg., whichever is higher" shall be substituted;

(xviii) in sub-heading No. 5407.93, for the entry in column (4), the entry "30% or Rs. 155 per kg., whichever is higher" shall be substituted;

(xix) in sub-heading No. 5407.94, for the entry in column (4), the entry "30% or Rs. 225 per kg., whichever is higher" shall be substituted;

(xx) in sub-heading Nos. 5408.10 and 5408.21, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xxi) in sub-heading Nos. 5408.22, 5408.23 and 5408.24, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 280 per kg., whichever is higher" shall be substituted;

(xxii) in sub-heading No. 5408.31, for the entry in column (4), the entry "30% or Rs. 203 per kg., whichever is higher" shall be substituted;

(xxiii) in sub-heading No. 5408.32, for the entry in column (4), the entry "30% or Rs. 280 per kg., whichever is higher" shall be substituted;

(xxiv) in sub-heading No. 5408.33, for the entry in column (4), the entry "30% or Rs. 10 per sq. mtr., whichever is higher" shall be substituted;

(xxv) in sub-heading No. 5408.34, for the entry in column (4), the entry "30% or Rs. 11 per sq. mtr., whichever is higher" shall be substituted;

(45) in Chapter 55,—

(i) in sub-heading Nos. 5501.10, 5501.20, 5501.30, 5501.90, 5502.00, 5503.10, 5503.20, 5503.30, 5503.40, 5503.90, 5504.10, 5504.90, 5506.10, 5506.20, 5506.30, 5506.90, 5507.00, 5508.10, 5508.20, 5509.11, 5509.12, 5509.21, 5509.22, 5509.31, 5509.32, 5509.41, 5509.42, 5509.51, 5509.52, 5509.53, 5509.59, 5509.61, 5509.62, 5509.69, 5509.91, 5509.92, 5509.99, 5510.11, 5510.12, 5510.20, 5510.30 and 5510.90, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(ii) in sub-heading Nos. 5511.10 and 5511.20, for the entry in column (4) occurring against each of them, the entry "20% or Rs. 31 per kg., whichever is higher" shall be substituted;

(iii) in sub-heading No. 5511.30, for the entry in column (4), the entry "20% or Rs. 30 per kg., whichever is higher" shall be substituted;

(iv) in sub-heading No. 5512.11, for the entry in column (4), the entry "35%" shall be substituted;

(v) in sub-heading No. 5512.19, for the entry in column (4), the entry "30% or Rs. 150 per kg., whichever is higher" shall be substituted;

(vi) in sub-heading No. 5512.21, for the entry in column (4), the entry "35%" shall be substituted;

(vii) in sub-heading No. 5512.29, for the entry in column (4), the entry "30% or Rs. 225 per kg., whichever is higher" shall be substituted;

(viii) in sub-heading No. 5512.91, for the entry in column (4), the entry "35%" shall be substituted;

(ix) in sub-heading No. 5512.99, for the entry in column (4), the entry "30% or Rs. 65 per kg., whichever is higher" shall be substituted;

(x) in sub-heading Nos. 5513.11, 5513.12, 5513.13 and 5513.19, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xi) in sub-heading Nos. 5513.21 and 5513.22, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 150 per kg., whichever is higher" shall be substituted;

(xii) in sub-heading No. 5513.23, for the entry in column (4), the entry "35% or Rs. 175 per kg., whichever is higher" shall be substituted;

(xiii) in sub-heading No. 5513.29, for the entry in column (4), the entry "35% or Rs. 185 per kg., whichever is higher" shall be substituted;

(xiv) in sub-heading No. 5513.31, for the entry in column (4), the entry "30% or Rs. 170 per kg., whichever is higher" shall be substituted;



(xv) in sub-heading No. 5513.32, for the entry in column (4), the entry "35% or Rs. 170 per kg., whichever is higher" shall be substituted;

(xvi) in sub-heading No. 5513.33, for the entry in column (4), the entry "35% or Rs. 195 per kg., whichever is higher" shall be substituted;

(xvii) in sub-heading No. 5513.39, for the entry in column (4), the entry "35% or Rs. 175 per kg., whichever is higher" shall be substituted;

(xviii) in sub-heading No. 5513.41, for the entry in column (4), the entry "30% or Rs. 110 per kg., whichever is higher" shall be substituted;

(xix) in sub-heading No. 5513.42, for the entry in column (4), the entry "35% or Rs. 150 per kg., whichever is higher" shall be substituted;

(xx) in sub-heading No. 5513.43, for the entry in column (4), the entry "35% or Rs. 175 per kg., whichever is higher" shall be substituted;

(xxi) in sub-heading No. 5513.49, for the entry in column (4), the entry "35% or Rs. 185 per kg., whichever is higher" shall be substituted;

(xxii) in sub-heading Nos. 5514.11, 5514.12, 5514.13 and 5514.19, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xxiii) in sub-heading Nos. 5514.21 and 5514.22, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 140 per kg., whichever is higher" shall be substituted;

(xxiv) in sub-heading No. 5514.23, for the entry in column (4), the entry "35% or Rs. 160 per kg., whichever is higher" shall be substituted;

(xxv) in sub-heading No. 5514.29, for the entry in column (4), the entry "35% or Rs. 170 per kg., whichever is higher" shall be substituted;

(xxvi) in sub-heading No. 5514.31, for the entry in column (4), the entry "35% or Rs. 160 per kg., whichever is higher" shall be substituted;

(xxvii) in sub-heading No. 5514.32, for the entry in column (4), the entry "30% or Rs. 160 per kg., whichever is higher" shall be substituted;

(xxviii) in sub-heading No. 5514.33, for the entry in column (4), the entry "35% or Rs. 180 per kg., whichever is higher" shall be substituted;

(xxix) in sub-heading No. 5514.39, for the entry in column (4), the entry "30% or Rs. 170 per kg., whichever is higher" shall be substituted;

(xxx) in sub-heading No. 5514.41, for the entry in column (4), the entry "30% or Rs. 140 per kg., whichever is higher" shall be substituted;

(xxxi) in sub-heading No. 5514.42, for the entry in column (4), the entry "35% or Rs. 140 per kg., whichever is higher" shall be substituted;

(xxxii) in sub-heading No. 5514.43, for the entry in column (4), the entry "35% or Rs. 175 per kg., whichever is higher" shall be substituted;

(xxxiii) in sub-heading No. 5514.49, for the entry in column (4), the entry "35% or Rs. 160 per kg., whichever is higher" shall be substituted;

(xxxiv) in sub-heading No. 5515.11, for the entry in column (4), the entry "30% or Rs. 205 per kg., whichever is higher" shall be substituted;

(xxxv) in sub-heading No. 5515.12, for the entry in column (4), the entry "35% or Rs. 95 per kg., whichever is higher" shall be substituted;

(xxxvi) in sub-heading No. 5515.13, for the entry in column (4), the entry "35% or Rs. 75 per sq. mtr., whichever is higher" shall be substituted;

(xxxvii) in sub-heading No. 5515.19, for the entry in column (4), the entry "30% or Rs. 260 per kg., whichever is higher" shall be substituted;

(xxxviii) in sub-heading No. 5515.21, for the entry in column (4), the entry "35% or Rs. 200 per kg., whichever is higher" shall be substituted;

(xxxix) in sub-heading No. 5515.22, for the entry in column (4), the entry "35% or Rs. 140 per kg., whichever is higher" shall be substituted;

(xl) in sub-heading No. 5515.29, for the entry in column (4), the entry "30% or Rs. 200 per kg., whichever is higher" shall be substituted;

(xli) in sub-heading No. 5515.91, for the entry in column (4), the entry "35% or Rs. 160 per kg., whichever is higher" shall be substituted;

(xlii) in sub-heading No. 5515.92, for the entry in column (4), the entry "35% or Rs. 200 per kg., whichever is higher" shall be substituted;

(xliii) in sub-heading No. 5515.99, for the entry in column (4), the entry "30% or Rs. 185 per kg., whichever is higher" shall be substituted;

(xliv) in sub-heading No. 5516.11, for the entry in column (4), the entry "35%" shall be substituted;

(xlv) in sub-heading No. 5516.12, for the entry in column (4), the entry "35% or Rs. 200 per kg., whichever is higher" shall be substituted;

(xlvi) in sub-heading No. 5516.13, for the entry in column (4), the entry "35% or Rs. 220 per kg., whichever is higher" shall be substituted;

(xlvii) in sub-heading No. 5516.14, for the entry in column (4), the entry "30% or Rs. 12 per sq. mtr., whichever is higher" shall be substituted;

(xlviii) in sub-heading Nos. 5516.21, 5516.22 and 5516.23, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xlix) in sub-heading No. 5516.24, for the entry in column (4), the entry "30% or Rs. 12 per sq. mtr., whichever is higher" shall be substituted;

(l) in sub-heading Nos. 5516.31, 5516.32, 5516.33, 5516.34, 5516.41 and 5516.42, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(li) in sub-heading Nos. 5516.43 and 5516.44, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 12 per sq. mtr., whichever is higher" shall be substituted;

(lii) in sub-heading Nos. 5516.91 and 5516.92, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(liii) in sub-heading No. 5516.93, for the entry in column (4), the entry "30% or Rs. 21 per sq. mtr., whichever is higher" shall be substituted;

(liv) in sub-heading No. 5516.94, for the entry in column (4), the entry "35% or Rs. 180 per kg., whichever is higher" shall be substituted;

(46) in Chapter 56,—

(i) in sub-heading No. 5601.10, for the entry in column (4), the entry "35%" shall be substituted;

(ii) in sub-heading Nos. 5601.21, 5601.22, 5601.29, 5601.30, 5602.10, 5602.21, 5602.29, 5602.90, 5603.11, 5603.12, 5603.13, 5603.14, 5603.91, 5603.92, 5603.93 and 5603.94, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(iii) in sub-heading Nos. 5604.10, 5604.20, 5604.90, 5605.00, 5606.00, 5607.10, 5607.21, 5607.29, 5607.30, 5607.41, 5607.49, 5607.50 and 5607.90, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(iv) in sub-heading Nos. 5608.11, 5608.19, 5608.90 and 5609.00, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(47) in Chapter 57,—

(i) in sub-heading Nos. 5701.10, 5701.90, 5702.10, 5702.20 and 5702.31, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(ii) in sub-heading No. 5702.32, for the entry in column (4), the entry "35% or Rs. 105 per sq. mtr., whichever is higher" shall be substituted;

(iii) in sub-heading Nos. 5702.39 and 5702.41, for the entries in column (4) occurring against each of them, the entry "35%" shall be substituted;

(iv) in sub-heading No. 5702.42, for the entry in column (4), the entry "35% or Rs. 80 per sq. mtr., whichever is higher" shall be substituted;

(v) in sub-heading Nos. 5702.49 and 5702.51, for the entries in column (4) occurring against each of them, the entry "35%" shall be substituted;

(vi) in sub-heading No. 5702.52, for the entry in column (4), the entry "35% or Rs. 105 per sq. mtr., whichever is higher" shall be substituted;

(vii) in sub-heading Nos. 5702.59 and 5702.91, for the entries in column (4) occurring against each of them, the entry "35%" shall be substituted;

(viii) in sub-heading No. 5702.92, for the entry in column (4), the entry "35% or Rs. 110 per sq. mtr., whichever is higher" shall be substituted;

(ix) in sub-heading Nos. 5702.99 and 5703.10, for the entries in column (4) occurring against each of them, the entry "35%" shall be substituted;

(x) in sub-heading No. 5703.20, for the entry in column (4), the entry "35% or Rs. 70 per sq. mtr., whichever is higher" shall be substituted;

(xi) in sub-heading No. 5703.30, for the entry in column (4), the entry "35% or Rs. 55 per sq. mtr., whichever is higher" shall be substituted;

(xii) in sub-heading Nos. 5703.90 and 5704.10, for the entries in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xiii) in sub-heading No. 5704.90, for the entry in column (4), the entry "35% or Rs. 35 per sq. mtr., whichever is higher" shall be substituted;

(xiv) in sub-heading No. 5705.00, for the entry in column (4), the entry "35%" shall be substituted;

(48) in Chapter 58,—

(i) in sub-heading No. 5801.10, for the entry in column (4), the entry "35% or Rs. 210 per sq. mtr., whichever is higher" shall be substituted;

(ii) in sub-heading No. 5801.21, for the entry in column (4), the entry "35% or Rs. 80 per sq. mtr., whichever is higher" shall be substituted;

(iii) in sub-heading No. 5801.22, for the entry in column (4), the entry "35% or Rs. 75 per sq. mtr., whichever is higher" shall be substituted;

(iv) in sub-heading No. 5801.23, for the entry in column (4), the entry "35% or Rs. 80 per sq. mtr., whichever is higher" shall be substituted;

(v) in sub-heading No. 5801.24, for the entry in column (4), the entry "35% or Rs. 135 per sq. mtr., whichever is higher" shall be substituted;

(vi) in sub-heading No. 5801.25, for the entry in column (4), the entry "35% or Rs. 120 per sq. mtr., whichever is higher" shall be substituted;

(vii) in sub-heading No. 5801.26, for the entry in column (4), the entry "35% or Rs. 180 per sq. mtr., whichever is higher" shall be substituted;

(viii) in sub-heading No. 5801.31, for the entry in column (4), the entry "35% or Rs. 75 per sq. mtr., whichever is higher" shall be substituted;

(ix) in sub-heading No. 5801.32, for the entry in column (4), the entry "35% or Rs. 180 per sq. mtr., whichever is higher" shall be substituted;

(x) in sub-heading No. 5801.33, for the entry in column (4), the entry "35% or Rs. 150 per sq. mtr., whichever is higher" shall be substituted;

(xi) in sub-heading No. 5801.34, for the entry in column (4), the entry "35% or Rs. 140 per sq. mtr., whichever is higher" shall be substituted;

(xii) in sub-heading No. 5801.35, for the entry in column (4), the entry "25% or Rs. 130 per sq. mtr., whichever is higher" shall be substituted;

(xiii) in sub-heading No. 5801.36, for the entry in column (4), the entry "35% or Rs. 130 per sq. mtr., whichever is higher" shall be substituted;

(xiv) in sub-heading No. 5801.90, for the entry in column (4), the entry "35% or Rs. 35 per sq. mtr., whichever is higher" shall be substituted;

(xv) in sub-heading No. 5802.19, for the entry in column (4), the entry "25% or Rs. 60 per sq. mtr., whichever is higher" shall be substituted;

(xvi) in sub-heading Nos. 5802.20, 5802.30, 5803.10 and 5803.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xvii) in sub-heading Nos. 5804.10, 5804.21, 5804.29 and 5804.30, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 200 per kg., whichever is higher" shall be substituted;

(xviii) in sub-heading Nos. 5805.00, 5806.10, 5806.20 and 5806.31, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xix) in sub-heading No. 5806.32, for the entry in column (4), the entry "25%" shall be substituted;

(xx) in sub-heading Nos. 5806.39 and 5806.40, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xxi) in sub-heading Nos. 5807.10 and 5807.90, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(xxii) in sub-heading No. 5808.10, for the entry in column (4), the entry "35%" shall be substituted;

(xxiii) in sub-heading Nos. 5808.90 and 5809.00, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(xxiv) in sub-heading No. 5810.10, for the entry in column (4), the entry "35% or Rs. 200 per kg., whichever is higher" shall be substituted;

(xxv) in sub-heading Nos. 5810.91, 5810.92, 5810.99 and 5811.00, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(49) in Chapter 59,—

(i) in sub-heading Nos. 5901.10, 5901.90, 5902.10, 5902.20, 5902.90, 5903.10, 5903.20 and 5903.90, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;



(ii) in sub-heading Nos. 5904.10, 5904.91, 5904.92, 5905.00, 5906.10, 5906.91, 5906.99, 5907.00, 5908.00 and 5909.00, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(iii) in sub-heading Nos. 5910.00 and 5911.10, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(iv) in sub-heading Nos. 5911.20, 5911.31, 5911.32, 5911.40 and 5911.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(50) in Chapter 60,—

(i) for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 6001.92, 6002.42 and 6002.43), the entry "35%" shall be substituted;

(ii) in sub-heading No. 6001.92, for the entry in column (4), the entry "25% or Rs. 100 per kg., whichever is higher" shall be substituted;

(iii) in sub-heading Nos. 6002.42 and 6002.43, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(51) in Chapter 61,—

(i) in sub-heading No. 6101.10, for the entry in column (4), the entry "35% or Rs. 700 per piece, whichever is higher" shall be substituted;

(ii) in sub-heading No. 6101.20, for the entry in column (4), the entry "35% or Rs. 540 per piece, whichever is higher" shall be substituted;

(iii) in sub-heading No. 6101.30, for the entry in column (4), the entry "35% or Rs. 530 per piece, whichever is higher" shall be substituted;

(iv) in sub-heading No. 6101.90, for the entry in column (4), the entry "35%" shall be substituted;

(v) in sub-heading No. 6102.10, for the entry in column (4), the entry "35% or Rs. 595 per piece, whichever is higher" shall be substituted;

(vi) in sub-heading No. 6102.20, for the entry in column (4), the entry "35% or Rs. 425 per piece, whichever is higher" shall be substituted;

(vii) in sub-heading No. 6102.30, for the entry in column (4), the entry "35% or Rs. 475 per piece, whichever is higher" shall be substituted;

(viii) in sub-heading Nos. 6102.90, 6103.11, 6103.12, 6103.19, 6103.21, 6103.22, 6103.23, 6103.29, 6103.31, 6103.32, 6103.33, 6103.39, 6103.41, 6103.42, 6103.43, 6103.49, 6104.11, 6104.12 and 6104.13, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(ix) in sub-heading No. 6104.19, for the entry in column (4), the entry "35% or Rs. 900 per piece, whichever is higher" shall be substituted;

(x) in sub-heading Nos. 6104.21, 6104.22, 6104.23, 6104.29, 6104.31, 6104.32, 6104.33 and 6104.39, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xi) in sub-heading No. 6104.41, for the entry in column (4), the entry "35% or Rs. 255 per piece, whichever is higher" shall be substituted;

(xii) in sub-heading No. 6104.42, for the entry in column (4), the entry "35%" shall be substituted;

(xiii) in sub-heading Nos. 6104.43 and 6104.44, for the entry in column (4)

occurring against each of them, the entry "35% or Rs. 255 per piece, whichever is higher" shall be substituted;

(xiv) in sub-heading No. 6104.49, for the entry in column (4), the entry "35% or Rs. 220 per piece, whichever is higher" shall be substituted;

(xv) in sub-heading Nos. 6104.51, 6104.52, 6104.53 and 6104.59, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 110 per piece, whichever is higher" shall be substituted;

(xvi) in sub-heading No. 6104.61, for the entry in column (4), the entry "35%" shall be substituted;

(xvii) in sub-heading Nos. 6104.62 and 6104.63, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 315 per piece, whichever is higher" shall be substituted;

(xviii) in sub-heading No. 6104.69, for the entry in column (4), the entry "35%" shall be substituted;

(xix) in sub-heading Nos. 6105.10, 6105.20 and 6105.90, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 135 per piece, whichever is higher" shall be substituted;

(xx) in sub-heading No. 6106.10, for the entry in column (4), the entry "35% or Rs. 125 per piece, whichever is higher" shall be substituted;

(xxi) in sub-heading No. 6106.20, for the entry in column (4), the entry "35% or Rs. 25 per piece, whichever is higher" shall be substituted;

(xxii) in sub-heading No. 6106.90, for the entry in column (4), the entry "35% or Rs. 135 per piece, whichever is higher" shall be substituted;

(xxiii) in sub-heading Nos. 6107.11 and 6107.12, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 30 per piece, whichever is higher" shall be substituted;

(xxiv) in sub-heading Nos. 6107.19, 6107.21, 6107.22, 6107.29, 6107.91, 6107.92, 6107.99, 6108.11 and 6108.19, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xxv) in sub-heading Nos. 6108.21 and 6108.22, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 30 per piece, whichever is higher" shall be substituted;

(xxvi) in sub-heading Nos. 6108.29, 6108.31, 6108.32 and 6108.39, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xxvii) in sub-heading Nos. 6108.91 and 6108.92, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 110 per piece, whichever is higher" shall be substituted;

(xxviii) in sub-heading No. 6108.99, for the entry in column (4), the entry "35%" shall be substituted;

(xxix) in sub-heading No. 6109.10, for the entry in column (4), the entry "35% or Rs. 70 per piece, whichever is higher" shall be substituted;

(xxx) in sub-heading No. 6109.90, for the entry in column (4), the entry "35% or Rs. 130 per piece, whichever is higher" shall be substituted;

(xxxi) in sub-heading No. 6110.10, for the entry in column (4), the entry "35% or Rs. 275 per piece, whichever is higher" shall be substituted;

(xxxii) in sub-heading No. 6110.20, for the entry in column (4), the entry "35% or Rs. 205 per piece, whichever is higher" shall be substituted;

(xxxiii) in sub-heading No. 6110.30, for the entry in column (4), the entry "35% or Rs. 270 per piece, whichever is higher" shall be substituted;

(xxxiv) in sub-heading No. 6110.90, for the entry in column (4), the entry "35% or Rs. 275 per piece, whichever is higher" shall be substituted;

(xxv) in sub-heading Nos. 6111.10, 6111.20, 6111.30, 6111.90, 6112.11, 6112.12, 6112.19, 6112.20, 6112.31, 6112.39, 6112.41, 6112.49, 6113.00, 6114.10, 6114.20, 6114.30, 6114.90, 6115.11, 6115.12, 6115.19, 6115.20, 6115.91, 6115.92, 6115.93, 6115.99, 6116.10, 6116.91, 6116.92, 6116.93, 6116.99, 6117.10, 6117.20, 6117.80 and 6117.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(52) in Chapter 62,—

(i) in sub-heading Nos. 6201.11, 6201.12 and 6201.13, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 385 per piece, whichever is higher" shall be substituted;

(ii) in sub-heading No. 6201.19, for the entry in column (4), the entry "35%" shall be substituted;

(iii) in sub-heading Nos. 6201.91, 6201.92 and 6201.93, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 220 per piece, whichever is higher" shall be substituted;

(iv) in sub-heading No. 6201.99, for the entry in column (4), the entry "35%" shall be substituted;

(v) in sub-heading Nos. 6202.11, 6202.12 and 6202.13, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 385 per piece, whichever is higher" shall be substituted;

(vi) in sub-heading No. 6202.19, for the entry in column (4), the entry "35%" shall be substituted;

(vii) in sub-heading Nos. 6202.91, 6202.92 and 6202.93, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 220 per piece, whichever is higher" shall be substituted;

(viii) in sub-heading No. 6202.99, for the entry in column (4), the entry "35%" shall be substituted;

(ix) in sub-heading No. 6203.11, for the entry in column (4), the entry "35% or Rs. 1100 per piece, whichever is higher" shall be substituted;

(x) in sub-heading No. 6203.12, for the entry in column (4), the entry "35% or Rs. 720 per piece, whichever is higher" shall be substituted;

(xi) in sub-heading No. 6203.19, for the entry in column (4), the entry "35% or Rs. 1110 per piece, whichever is higher" shall be substituted;

(xii) in sub-heading Nos. 6203.21, 6203.22, 6203.23 and 6203.29, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 145 per piece, whichever is higher" shall be substituted;

(xiii) in sub-heading No. 6203.31, for the entry in column (4), the entry "35% or Rs. 815 per piece, whichever is higher" shall be substituted;

(xiv) in sub-heading No. 6203.32, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 450 per piece, whichever is higher" shall be substituted;

(xv) in sub-heading No. 6203.33, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 815 per piece, whichever is higher" shall be substituted;

(xvi) in sub-heading No. 6203.39, for the entry in column (4), the entry "35% or Rs. 765 per piece, whichever is higher" shall be substituted;

(xvii) in sub-heading No. 6203.41, for the entry in column (4), the entry "35% or Rs. 285 per piece, whichever is higher" shall be substituted;

(xviii) in sub-heading No. 6203.42, for the entry in column (4), the entry "35% or Rs. 235 per piece, whichever is higher" shall be substituted;

(xix) in sub-heading Nos. 6203.43 and 6203.49, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 200 per piece, whichever is higher" shall be substituted;

(xx) in sub-heading No. 6204.11, for the entry in column (4), the entry "35% or Rs. 1100 per piece, whichever is higher" shall be substituted;

(xxi) in sub-heading No. 6204.12, for the entry in column (4), the entry "35%" shall be substituted;

(xxii) in sub-heading Nos. 6204.13 and 6204.19, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 1100 per piece, whichever is higher" shall be substituted;

(xxiii) in sub-heading Nos. 6204.21, 6204.22, 6204.23 and 6204.29, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xxiv) in sub-heading No. 6204.31, for the entry in column (4), the entry "35% or Rs. 815 per piece, whichever is higher" shall be substituted;

(xxv) in sub-heading No. 6204.32, for the entry in column (4), the entry "35% or Rs. 660 per piece, whichever is higher" shall be substituted;

(xxvi) in sub-heading Nos. 6204.33 and 6204.39, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 815 per piece, whichever is higher" shall be substituted;

(xxvii) in sub-heading Nos. 6204.41, 6204.42, 6204.43, 6204.44 and 6204.49, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 145 per piece, whichever is higher" shall be substituted;

(xxviii) in sub-heading No. 6204.51, for the entry in column (4), the entry "35% or Rs. 485 per piece, whichever is higher" shall be substituted;

(xxix) in sub-heading Nos. 6204.52, 6204.53 and 6204.59, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xxx) in sub-heading No. 6204.61, for the entry in column (4), the entry "35% or Rs. 285 per piece, whichever is higher" shall be substituted;

(xxxi) in sub-heading No. 6204.62, for the entry in column (4), the entry "35% or Rs. 215 per piece, whichever is higher" shall be substituted;

(xxxii) in sub-heading No. 6204.63, for the entry in column (4), the entry "35%" shall be substituted;

(xxxiii) in sub-heading Nos. 6204.69 and 6205.10, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 200 per piece, whichever is higher" shall be substituted;

(xxxiv) in sub-heading Nos. 6205.20, 6205.30 and 6205.90, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 135 per piece, whichever is higher" shall be substituted;



(xxxv) in sub-heading No. 6206.10, for the entry in column (4), the entry "35%" shall be substituted;

(xxxvi) in sub-heading Nos. 6206.20, 6206.30 and 6206.40, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 135 per piece, whichever is higher" shall be substituted;

(xxxvii) in sub-heading No. 6206.90, for the entry in column (4), the entry "35%" shall be substituted;

(xxxviii) in sub-heading Nos. 6207.11 and 6207.19, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 160 per piece, whichever is higher" shall be substituted;

(xxxix) in sub-heading Nos. 6207.21, 6207.22, 6207.29, 6207.91 and 6207.92, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xl) in sub-heading No. 6207.99, for the entry in column (4), the entry "35% or Rs. 160 per piece, whichever is higher" shall be substituted;

(xli) in sub-heading Nos. 6208.11 and 6208.19, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 160 per piece, whichever is higher" shall be substituted;

(xlii) in sub-heading Nos. 6208.21, 6208.22 and 6208.29, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xliii) in sub-heading Nos. 6208.91 and 6208.92, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 160 per piece, whichever is higher" shall be substituted;

(xliv) in sub-heading Nos. 6208.99, 6209.10, 6209.20, 6209.30, 6209.90 and 6210.10, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xlv) in sub-heading No. 6210.20, for the entry in column (4), the entry "35% or Rs. 365 per piece, whichever is higher" shall be substituted;

(xlvi) in sub-heading No. 6210.30, for the entry in column (4), the entry "35% or Rs. 305 per piece, whichever is higher" shall be substituted;

(xlvii) in sub-heading Nos. 6210.40 and 6210.50, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 110 per piece, whichever is higher" shall be substituted;

(xlviii) in sub-heading Nos. 6211.11, 6211.12, 6211.20 and 6211.31, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xlix) in sub-heading Nos. 6211.32 and 6211.33, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 135 per piece, whichever is higher" shall be substituted;

(l) in sub-heading Nos. 6211.39 and 6211.41, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(li) in sub-heading Nos. 6211.42 and 6211.43, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 135 per piece, whichever is higher" shall be substituted;

(lii) in sub-heading No. 6211.49, for the entry in column (4), the entry "35%" shall be substituted;

(liii) in sub-heading Nos. 6212.10, 6212.20, 6212.30 and 6212.90, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 30 per piece, whichever is higher" shall be substituted;

(liv) in sub-heading Nos. 6213.10, 6213.20 and 6213.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(lv) in sub-heading No. 6214.10, for the entry in column (4), the entry "35% or Rs. 400 per piece, whichever is higher" shall be substituted;

(lvi) in sub-heading No. 6214.20, for the entry in column (4), the entry "35% or Rs. 180 per piece, whichever is higher" shall be substituted;

(lvii) in sub-heading Nos. 6214.30 and 6214.40, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(lviii) in sub-heading No. 6214.90, for the entry in column (4), the entry "35% or Rs. 75 per piece, whichever is higher" shall be substituted;

(lix) in sub-heading Nos. 6215.10, 6215.20 and 6215.90, for the entry in column (4) occurring against each of them, the entry "35% or Rs. 55 per piece, whichever is higher" shall be substituted;

(lx) in sub-heading Nos. 6216.00, 6217.10 and 6217.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(53) in Chapter 63,—

(i) for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 6301.20, 6302.21, 6302.31, 6310.10 and 6310.90), the entry "35%" shall be substituted;

(ii) in sub-heading No. 6301.20, for the entry in column (4), the entry "35% or Rs. 285 per piece, whichever is higher" shall be substituted;

(iii) in sub-heading No. 6302.21, for the entry in column (4), the entry "35% or Rs. 108 per kg., whichever is higher" shall be substituted;

(iv) in sub-heading No. 6302.31, for the entry in column (4), the entry "35% or Rs. 96 per kg., whichever is higher" shall be substituted;

(54) in Chapter 64, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(55) in Chapter 65, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(56) in Chapter 66, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(57) in Chapter 67, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(58) in Chapter 68, for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 6806.10, 6806.20 and 6806.90), the entry "35%" shall be substituted;

(59) in Chapter 69, for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 6902.10, 6902.20, 6902.90, 6903.10, 6903.20 and 6903.90), the entry "35%" shall be substituted;

(60) in Chapter 70, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(61) in Chapter 71, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(62) in Chapter 72, in sub-heading Nos. 7201.10, 7201.20 and 7201.50, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(63) in Chapter 75, in sub-heading Nos. 7508.10 and 7508.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(64) in Chapter 76, in sub-heading Nos. 7615.11, 7615.19 and 7615.20, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(65) in Chapter 80, in sub-heading No. 8007.00, for the entry in column (4), the entry "35%" shall be substituted;

(66) in Chapter 82, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(67) in Chapter 83, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;

(68) in Chapter 84,—

(i) in sub-heading Nos. 8414.51, 8414.59, 8415.10, 8415.20, 8415.81, 8415.82, 8415.83, 8415.90, 8418.21, 8418.22, 8418.29, 8418.91, 8418.99, 8422.11, 8422.19, 8422.90, 8423.10, 8448.19, 8450.11, 8450.12, 8450.19, 8450.90 and 8452.10, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(ii) in sub-heading Nos. 8452.30 and 8452.40, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(iii) in sub-heading No. 8452.90, for the entry in column (4), the entry "35%" shall be substituted;

(iv) in sub-heading No. 8469.11, for the entry in column (4), the entry "20%" shall be substituted;

(v) in sub-heading Nos. 8469.12, 8469.20 and 8469.30, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(vi) in sub-heading Nos. 8470.10, 8470.21, 8470.29, 8470.30, 8470.40, 8470.50 and 8470.90, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(vii) in sub-heading Nos. 8471.10, 8471.30, 8471.41, 8471.49, 8471.50 and 8471.60, for the entry in column (4) occurring against each of them, the entry "15%" shall be substituted;

(viii) in sub-heading No. 8471.70, for the entry in column (4), the entry "Free" shall be substituted;

(ix) in sub-heading Nos. 8471.80 and 8471.90, for the entry in column (4) occurring against each of them, the entry "15%" shall be substituted;

(x) in sub-heading Nos. 8472.10, 8472.20, 8472.30, 8472.90 and 8473.10, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xi) in sub-heading Nos. 8473.21 and 8473.29, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(xii) in sub-heading No. 8473.30, for the entry in column (4), the entry "15%" shall be substituted;

(xiii) in sub-heading No. 8473.40, for the entry in column (4), the entry "35%" shall be substituted;

(xiv) in sub-heading No. 8473.50, for the entry in column (4), the entry "15%" shall be substituted;

(xv) in sub-heading Nos. 8482.10, 8482.20, 8482.30, 8482.40, 8482.50, 8482.80, 8482.91, 8482.99 and 8483.20, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(69) in Chapter 85,—

(i) in sub-heading Nos. 8504.10, 8506.10, 8506.30, 8506.40, 8506.50, 8506.60, 8506.80, 8506.90, 8507.10, 8507.20, 8507.30, 8507.40, 8507.80, 8507.90, 8509.10, 8509.20, 8509.30, 8509.40, 8509.80, 8509.90, 8510.10, 8510.20, 8510.30, 8510.90, 8511.10, 8511.20, 8511.30, 8511.40, 8511.50, 8511.80, 8511.90, 8512.10, 8512.20, 8512.30, 8512.40, 8512.90, 8513.10, 8513.90, 8516.10, 8516.21, 8516.29, 8516.31, 8516.32, 8516.33, 8516.40, 8516.50, 8516.60, 8516.71, 8516.72, 8516.79 and 8516.80, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(ii) in sub-heading Nos. 8517.11, 8517.19, 8517.21 and 8517.22, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(iii) in sub-heading No. 8517.90, for the entry in column (4), the entry "15%" shall be substituted;

(iv) in sub-heading Nos. 8518.10, 8518.21, 8518.22, 8518.29, 8518.30, 8518.40, 8518.50, 8519.10, 8519.21, 8519.29, 8519.31, 8519.39, 8519.40, 8519.92, 8519.93, 8519.99 and 8520.10, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(v) in sub-heading No. 8520.20, for the entry in column (4), the entry "20%" shall be substituted;

(vi) in sub-heading Nos. 8520.32, 8520.33, 8520.39, 8520.90, 8521.10, 8521.90 and 8522.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(vii) in sub-heading Nos. 8523.11, 8523.12, 8523.13 and 8523.20, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(viii) in sub-heading Nos. 8523.30, 8524.10, 8524.32, 8524.39, 8524.51, 8524.52, 8524.53, 8524.60, 8524.99, 8525.30, 8525.40, 8526.10, 8526.91, 8526.92, 8527.12, 8527.13, 8527.19, 8527.21, 8527.29, 8527.31, 8527.32, 8527.39, 8528.12, 8528.13, 8528.21, 8528.22, 8528.30 and 8531.10, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(ix) in sub-heading No. 8531.20, for the entry in column (4), the entry "20%" shall be substituted;

(x) in sub-heading Nos. 8531.80, 8531.90 and 8532.10, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xi) in sub-heading No. 8532.21, for the entry in column (4), the entry "Free" shall be substituted;

(xii) in sub-heading Nos. 8532.22 and 8532.23, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(xiii) in sub-heading No. 8532.24, for the entry in column (4), the entry "Free" shall be substituted;

(xiv) in sub-heading Nos. 8532.25, 8532.29 and 8532.30, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(xv) in sub-heading Nos. 8532.90 and 8533.90, for the entry in column (4) occurring against each of them, the entry "Free" shall be substituted;



(xvi) in sub-heading Nos. 8535.10, 8535.21, 8535.29, 8535.30, 8535.40 and 8535.90, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(xvii) in sub-heading Nos. 8539.10, 8539.21, 8539.22, 8539.29, 8539.31, 8539.32, 8539.39, 8539.41, 8539.49 and 8539.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(xviii) in sub-heading Nos. 8540.40, 8541.90, 8542.12, 8542.13, 8542.14, 8542.19, 8542.30, 8542.40, 8542.50 and 8542.90, for the entry in column (4) occurring against each of them, the entry "Free" shall be substituted;

(xix) in sub-heading No. 8543.81, for the entry in column (4), the entry "20%" shall be substituted;

(xx) in sub-heading Nos. 8544.11, 8544.19, 8544.20, 8544.30, 8544.41, 8544.49, 8544.51, 8544.59 and 8544.60, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(70) in Chapter 86, for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 8607.11, 8607.12, 8607.19, 8607.21, 8607.29, 8607.30, 8607.91, 8607.99 and 8608.00), the entry "35%" shall be substituted;

(71) in Chapter 87, for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading No. 8710.00), the entry "35%" shall be substituted;

(72) in Chapter 88,—

(i) in sub-heading No. 8801.10, for the entry in column (4), the entry "25%" shall be substituted;

(ii) in sub-heading No. 8801.90, for the entry in column (4), the entry "35%" shall be substituted;

(iii) in sub-heading Nos. 8802.11 and 8802.12, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(iv) in sub-heading Nos. 8802.60, 8803.90, 8804.00, 8805.10 and 8805.20, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(73) in Chapter 89,—

(i) in sub-heading Nos. 8901.10, 8901.20, 8901.30 and 8901.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(ii) in sub-heading No. 8902.00, for the entry in column (4), the entry "25%" shall be substituted;

(iii) in sub-heading Nos. 8903.10, 8903.91, 8903.92 and 8903.99, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(iv) in sub-heading Nos. 8904.00 and 8905.10, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(v) in sub-heading No. 8905.20, for the entry in column (4), the entry "35%" shall be substituted;

(vi) in sub-heading Nos. 8905.90 and 8906.00, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(vii) in sub-heading Nos. 8907.10 and 8907.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(74) in Chapter 90,—

- (i) in sub-heading Nos. 9001.10, 9001.20, 9001.30, 9001.40, 9001.50, 9001.90, 9002.11, 9002.19, 9002.20, 9002.90, 9003.11, 9003.19, 9003.90, 9004.10, 9004.90, 9005.10, 9005.80, 9005.90, 9006.10, 9006.20, 9006.30, 9006.40, 9006.51, 9006.52, 9006.53, 9006.59, 9006.61, 9006.62 and 9006.69, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;
- (ii) in sub-heading Nos. 9007.11, 9007.19 and 9007.20, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;
- (iii) in sub-heading Nos. 9008.10, 9008.20, 9008.30, 9008.40, 9009.11, 9009.12, 9009.21, 9009.22 and 9009.30, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;
- (iv) in sub-heading No. 9010.10, for the entry in column (4), the entry "25%" shall be substituted;
- (v) in sub-heading Nos. 9010.41, 9010.42 and 9010.49, for the entry in column (4) occurring against each of them, the entry "Free" shall be substituted;
- (vi) in sub-heading No. 9010.50, for the entry in column (4), the entry "25%" shall be substituted;
- (vii) in sub-heading No. 9010.60, for the entry in column (4), the entry "35%" shall be substituted;
- (viii) in sub-heading Nos. 9022.19, 9022.29, 9022.30 and 9022.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;
- (ix) in sub-heading Nos. 9026.20, 9026.80, 9026.90, 9027.20, 9027.30, 9027.50 and 9027.80, for the entry in column (4) occurring against each of them, the entry "10%" shall be substituted;
- (x) in sub-heading No. 9030.40, for the entry in column (4), the entry "20%" shall be substituted;
- (xi) in sub-heading No. 9030.82, for the entry in column (4), the entry "Free" shall be substituted;
- (75) in Chapter 91, in sub-heading Nos. 9101.11, 9101.12, 9101.19, 9101.21, 9101.29, 9101.91, 9101.99, 9102.11, 9102.12, 9102.19, 9102.21, 9102.29, 9102.91, 9102.99, 9103.10, 9103.90, 9104.00, 9105.11, 9105.19, 9105.21, 9105.29, 9105.91, 9105.99, 9106.10, 9106.20, 9106.90, 9107.00, 9111.10, 9111.90 and 9113.10, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;
- (76) in Chapter 93, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;
- (77) in Chapter 94, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;
- (78) in Chapter 95, for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 9506.11, 9506.12, 9506.19, 9506.21, 9506.29, 9506.31, 9506.32, 9506.39, 9506.40, 9506.51, 9506.59, 9506.61, 9506.62, 9506.69, 9506.70, 9506.91, 9506.99, 9507.10, 9507.20, 9507.30 and 9507.90), the entry "35%" shall be substituted;
- (79) in Chapter 96, for the entry in column (4) occurring against all the sub-heading Nos., the entry "35%" shall be substituted;
- (80) in Chapter 97, for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading No. 9704.00), the entry "35%" shall be substituted;
- (81) in Chapter 98, in sub-heading Nos. 9804.90, 9805.10, and 9805.90, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

## THE THIRD SCHEDULE

[See section 113(i)]

## PART I

In the First Schedule to the Central Excise Tariff Act,—

(1) in Chapter 11, in sub-heading No. 1103.00, for the entry in column (4), the entry "16%" shall be substituted;

(2) in Chapter 13, in sub-heading No. 1301.10, for the entry in column (4), the entry "16%" shall be substituted;

(3) in Chapter 16, in sub-heading No. 1601.10, for the entry in column (4), the entry "16%" shall be substituted;

(4) in Chapter 17, in sub-heading Nos. 1702.19, 1702.21, 1702.29, 1702.30 and 1704.90, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(5) in Chapter 19, in sub-heading Nos. 1905.11, 1905.20 and 1905.39, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(6) in Chapter 20, in sub-heading No. 2001.10, for the entry in column (4), the entry "16%" shall be substituted;

(7) in Chapter 21,—

(i) in sub-heading No. 2101.30, for the entry in column (4), the entry "Nil" shall be substituted;

(ii) in sub-heading Nos. 2103.10, 2104.10, 2106.00 and 2108.10, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(8) in Chapter 22, in sub-heading Nos. 2201.20, 2202.20 and 2202.40, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(9) in Chapter 24,—

(i) in sub-heading No. 2401.90, for the entry in column (4), the entry "16%" shall be substituted;

(ii) in sub-heading No. 2403.11, for the entry in column (4), the entry "Rs. 78 per thousand" shall be substituted;

(iii) in sub-heading No. 2403.12, for the entry in column (4), the entry "Rs. 265 per thousand" shall be substituted;

(iv) in sub-heading No. 2403.13, for the entry in column (4), the entry "Rs. 395 per thousand" shall be substituted;

(v) in sub-heading No. 2403.14, for the entry in column (4), the entry "Rs. 645 per thousand" shall be substituted;

(vi) in sub-heading No. 2403.15, for the entry in column (4), the entry "Rs. 860 per thousand" shall be substituted;

(vii) in sub-heading No. 2403.19, for the entry in column (4), the entry "Rs. 1050 per thousand" shall be substituted;

(viii) in sub-heading Nos. 2404.40, 2404.50 and 2404.99, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

**(10) in Chapter 25,—**

(i) in sub-heading Nos. 2502.21, 2502.30, 2502.40, 2502.50 and 2502.90, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(ii) in sub-heading Nos. 2504.21 and 2504.31, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(11) in Chapter 26, for the entry in column (4) occurring against all the sub-heading Nos. the entry "16%" shall be substituted;

**(12) in Chapter 27,—**

(i) after NOTE 8, the following NOTE shall be inserted, namely:—

"9. In relation to lubricating oils and lubricating preparations of heading No. 27.10, labeling or relabeling of containers and repacking from bulk pack to retail packs or the adoption of any other treatment to render the product marketable to the consumer shall amount to 'manufacture'.";

(ii) in sub-heading Nos. 2708.11, 2708.19, 2708.20, 2710.11, 2710.12, 2710.13, 2710.19, 2711.11, 2711.12, 2711.19 and 2711.29, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

**(13) in Chapter 28,—**

(i) in sub-heading No. 2804.11, for the entry in column (4), the entry "Nil" shall be substituted;

(ii) in sub-heading No. 2833.10, for the entry in column (4), the entry "16%" shall be substituted;

(iii) in sub-heading No. 2847.11, for the entry in column (4), the entry "Nil" shall be substituted;

(14) in Chapter 30, in sub-heading Nos. 3003.20 and 3003.39, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(15) in Chapter 32, in sub-heading No. 3201.00, for the entry in column (4), the entry "16%" shall be substituted;

(16) in Chapter 33, in sub-heading Nos. 3304.00, 3305.99, 3306.10, 3307.10, 3307.20, 3307.39, 3307.50 and 3307.90, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(17) in Chapter 34, in sub-heading No. 3401.11, for the entry in column (4), the entry "16%" shall be substituted;

(18) in Chapter 38, in sub-heading Nos. 3808.10, 3808.20 and 3823.00, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(19) in Chapter 39, in all the sub-heading Nos. (except sub-heading Nos. 3903.20, 3903.30, 3905.10, 3905.20, 3905.90, 3906.10, 3906.20, 3906.90, 3907.10, 3907.20, 3907.30, 3907.40, 3907.50, 3907.60, 3907.70, 3907.80, 3907.91, 3907.99, 3908.10, 3908.90, 3909.10, 3909.20, 3909.30, 3909.40, 3909.51, 3909.52, 3909.59, 3909.60, 3910.00, 3911.10, 3911.20, 3911.90, 3912.11, 3912.12, 3912.20, 3912.31, 3912.39, 3912.90, 3913.10, 3913.20, 3913.30, 3913.90, 3914.00, 3916.10, 3923.10 and 3924.10) for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(20) in Chapter 40, in sub-heading Nos. 4006.10, 4008.19, 4008.22, 4010.10, 4010.90, 4011.90, 4012.11, 4012.19, 4012.90, 4013.90 and 4016.11, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;



(21) in Chapter 43, in sub-heading No. 4301.00, for the entry in column (4), the entry "16%" shall be substituted;

(22) in Chapter 44, in sub-heading Nos. 4406.10, 4406.20, 4406.30, 4406.90, 4407.10 and 4407.90, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(23) in Chapter 48,—

(i) in sub-heading Nos. 4804.20 and 4811.31, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(ii) in sub-heading No. 4818.10, for the entry in column (4) occurring against each of them, the entry "Nil" shall be substituted;

(iii) in sub-heading Nos. 4823.30 and 4823.40, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(24) in Chapter 51, in sub-heading Nos. 5105.10, 5105.21, 5105.29, 5105.30, 5105.40, 5106.11, 5106.12, 5106.13, 5107.11 and 5107.12, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(25) in Chapter 52, in sub-heading Nos. 5204.10, 5207.10, 5207.21, 5207.22, 5207.23, 5207.29, 5208.10, 5208.21, 5208.22, 5208.23, 5208.29, 5209.10, 5209.21, 5209.22, 5209.23 and 5209.29, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(26) in Chapter 53,—

(i) in sub-heading Nos. 5307.11, 5307.12 and 5308.11, for the entry in column (4) occurring against each of them, the entry "Nil" shall be substituted;

(ii) in sub-heading Nos. 5309.10, 5309.21, 5309.22, 5309.23, 5309.29, 5310.10, 5310.21, 5310.22, 5310.23 and 5310.29, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(27) in Chapter 54, in sub-heading Nos. 5402.10, 5402.20, 5402.31, 5402.32, 5402.41, 5402.42, 5402.43, 5402.51, 5402.52, 5402.61, 5402.62, 5406.10, 5406.21, 5406.22, 5406.23, 5406.29, 5407.10, 5407.21, 5407.22, 5407.23 and 5407.29, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(28) in Chapter 55, in sub-heading Nos. 5505.10, 5511.10, 5511.21, 5511.22, 5511.23, 5511.29, 5512.10, 5512.21, 5512.22, 5512.23, 5512.29, 5513.10, 5513.21, 5513.22, 5513.23, 5513.29, 5514.10, 5514.21, 5514.22, 5514.23 and 5514.29, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(29) in Chapter 56, in sub-heading Nos. 5601.10 and 5607.10, for the entry in column (4), the entry "Nil" shall be substituted;

(30) in Chapter 57, in sub-heading Nos. 5702.19 and 5703.90, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(31) in Chapter 58, in sub-heading Nos. 5801.21, 5801.22, 5801.31, 5801.32, 5802.21, 5802.22, 5802.31, 5802.32, 5803.00, 5805.11, 5805.19, 5806.31 and 5806.32, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(32) in Chapter 59, in sub-heading Nos. 5901.10, 5901.90, 5904.10, 5904.91, 5904.92, 5905.00, 5907.90 and 5910.00, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(33) in Chapter 60, in sub-heading Nos. 6001.11, 6001.12, 6001.21, 6001.22, 6001.91, 6001.92, 6002.30, 6002.42, 6002.43, 6002.92 and 6002.93, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(34) in Chapter 63, for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading No. 6307.10), the entry "16%" shall be substituted;

(35) in Chapter 66, in sub-heading No. 6601.00, for the entry in column (4), the entry "Nil" shall be substituted;

(36) in Chapter 68, in sub-heading Nos. 6807.10 and 6807.20, for the entry in column (4) occurring against each of them, the entry "Nil" shall be substituted;

(37) in Chapter 69, in sub-heading No. 6906.10, for the entry in column (4), the entry "16%" shall be substituted;

(38) in Chapter 70, in sub-heading No. 7015.00, for the entry in column (4), the entry "16%" shall be substituted;

(39) in Chapter 73, in sub-heading No. 7323.10, for the entry in column (4), the entry "16%" shall be substituted;

(40) in Chapter 76, in sub-heading No. 7615.20, for the entry in column (4), the entry "16%" shall be substituted;

(41) in Chapter 82, in sub-heading No. 8215.00, for the entry in column (4), the entry "Nil" shall be substituted;

(42) in Chapter 84, in sub-heading Nos. 8414.30, 8414.92, 8415.00, 8418.90, 8434.10, 8434.90, 8452.19, 8476.91, 8481.10 and 8481.91, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(43) in Chapter 85,—

(i) in sub-heading Nos. 8527.10 and 8536.10, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(ii) in sub-heading No. 8539.10, for the entry in column (4), the entry "Nil" shall be substituted;

(44) in Chapter 87,—

(i) after NOTE 5, the following NOTE shall be inserted, namely:—

"6. For the purposes of this Chapter, 'station wagons' means vehicles which may be used, without structural alteration, for the transportation of both persons and goods."

(ii) in sub-heading Nos. 8701.10, 8704.90, 8706.11, 8706.21, 8706.39, 8706.49, 8711.20 and 8711.90, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(45) in Chapter 89,—

(i) in all the sub-heading Nos. (except sub-heading Nos. 8903.00, 8907.00 and 8908.00), for the entry in column (4) occurring against each of them, the entry "Nil" shall be substituted;

(ii) in sub-heading Nos. 8903.00 and 8907.00, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(46) in Chapter 90,—

(i) in sub-heading No. 9001.10, for the entry in column (4), the entry "Nil" shall be substituted;

(ii) in sub-heading Nos. 9003.11 and 9003.19, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(iii) in sub-heading Nos. 9018.00 and 9019.00, for the entry in column (4) occurring against each of them, the entry "Nil" shall be substituted;

(iv) in sub-heading No. 9020.00, for the entry in column (4), the entry "16%" shall be substituted;

(v) in sub-heading Nos. 9021.90 and 9022.10, for the entry in column (4) occurring against each of them, the entry "Nil" shall be substituted;

(vi) in sub-heading Nos. 9032.11 and 9032.91, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(47) in Chapter 91, in all the sub-heading Nos. (except sub-heading Nos. 9101.10, 9101.90, 9102.10 and 9102.90), for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(48) in Chapter 92, in all the sub-heading Nos. for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(49) in Chapter 93, in all the sub-heading Nos. (except sub-heading No. 9301.00), for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(50) in Chapter 94,—

(i) in sub-heading No. 9404.00, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(ii) in sub-heading No. 9406.00, for the entry in column (4) occurring against each of them, the entry "Nil" shall be substituted;

(51) in Chapter 96, in sub-heading Nos. 9605.10 and 9607.00, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted.

## PART II

Heading No.	Sub-heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)

In the First Schedule to the Central Excise Tariff Act,—

(I) in Chapter 69,—

(i) for heading No. 69.05 and the entries relating thereto, the following shall be substituted, namely:—

"69.05

UNGLAZED CERAMIC FLAGS AND PAVING,  
HEARTH OR WALL TILES; UNGLAZED  
CERAMIC MOSAIC CUBES AND THE  
LIKE, WHETHER OR NOT ON A BACKING

6905.10

- Vitrified tiles, whether polished or not

16%

6905.90

- Other

16%";

(ii) after sub-heading No. 6906.10 and the entries relating thereto, the following shall be inserted, namely:—

"6906.20

- Broken glazed tiles

16%";

Heading No.	Sub-heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)

(2) in Chapter 87,—

(i) for heading No. 87.02 and the entries relating thereto, the following shall be substituted, namely:—

"87.02

MOTOR VEHICLES PRINCIPALLY DESIGNED FOR THE TRANSPORT OF MORE THAN SIX PERSONS, EXCLUDING THE DRIVER, INCLUDING STATION WAGONS

8702.10	- Motor vehicles principally designed for the transport of more than six persons, but not more than twelve persons, excluding the driver, including station wagons	16%
8702.90	- Other	16%.

(ii) for heading No. 87.03 and the entries relating thereto, the following shall be substituted, namely:—

"87.03

MOTOR CARS AND OTHER MOTOR VEHICLES PRINCIPALLY DESIGNED FOR THE TRANSPORT OF NOT MORE THAN SIX PERSONS, EXCLUDING THE DRIVER, INCLUDING STATION WAGONS AND RACING CARS

8703.10	- Three-wheeled motor vehicles	16%
8703.90	- Other	16%.



## THE FOURTH SCHEDULE

[See section 113 (ii)]

## PART I

In the Second Schedule to the Central Excise Tariff Act,—

(1) in sub-heading Nos. 2106.00, 2108.10, 2201.20, 2202.20, 2401.90, 2404.40, 2404.50 and 2404.99, for the entry in column (4) occurring against each of them, the entry "24%" shall be substituted;

(2) in sub-heading Nos. 2710.11, 2710.12, 2710.13, 2710.19, 3304.00, 3305.99, 3307.10, 3307.20, 3307.39, 3307.90, 4011.90, 4012.11, 4012.19, 4012.90, 4013.90, 5402.20, 5402.32, 5402.42, 5402.43, 5402.52, 5402.62 and 8415.00, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(3) in sub-heading Nos. 8703.90 and 8704.90, for the entry in column (4) occurring against each of them, the entry "24%" shall be substituted;

(4) in sub-heading No. 8706.21, for the entry in column (4), the entry "16%" shall be substituted;

(5) in sub-heading Nos. 8706.39 and 8706.49, for the entry in column (4) occurring against each of them, the entry "24%" shall be substituted;

(6) in sub-heading No. 9605.10, for the entry in column (4), the entry "16%" shall be substituted.

## PART II

Heading No.	Sub-heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)

In the Second Schedule to the Central Excise Tariff Act,—

(1) after sub-heading No. 2404.99 and the entries relating thereto, the following shall be inserted, namely:—

"25.02	2502.21	-- White cement, whether or not artificially coloured and whether or not with rapid hardening properties	8%
	2502.30	- Aluminous cement ("Cement fondu")	8%
	2502.40	- Sagol; ashmoh	8%
	2502.50	- High alumina refractory cement	8%
	2502.90	- Other	8%";

(2) after heading No. 40.13 and the entries relating thereto, the following shall be inserted, namely:—

"43.01	4301.00	MANUFACTURES OF FURSKINS AND ARTIFICIAL FUR	8%";
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(3) after sub-heading No. 5402.62, and the entries relating thereto, the following shall be inserted, namely:—

"57.02	5702.19	-- Other	8%
57.03	5703.90	- Other	8%
59.04	5904.10	- Linoleum	8%
		- Other:	
	5904.91	-- With a base consisting of needleloom felt or non-wovens	8%
	5904.92	-- With other textile base	8%
59.05	5905.00	TEXTILE WALL COVERINGS	8%
59.07	5907.90	- Other	8%";

(4) the sub-heading No. 5505.10 and the entries relating thereto shall be omitted;

(5) after sub-heading No. 5907.90 and the entries relating thereto, the following shall be inserted, namely:—

"69.05	6905.10	- Vitrified tiles, whether polished or not	8%
69.06	6906.10	- Glazed tiles	8%";

Heading No.	Sub-heading No.	Description of Goods	Rate of duty
(1)	(2)	(3)	(4)
(6) sub-heading Nos. 8414.30, 8414.92, 8418.90, 8476.91, 8481.10, 8481.91 and 8536.10 and the entries relating thereto shall be omitted;			
(7) for sub-heading No. 8702.10, and the entries relating thereto, the following shall be substituted, namely:—			
" 87.02	8702.10	Motor vehicles principally designed for the transport of more than six persons, but not more than twelve persons, excluding the driver, including station wagons	16%";
(8) after sub-heading No. 8706.49 and the entries relating thereto, the following shall be inserted, namely:—			
"87.11	8711.20	Two-wheeled motor vehicles of engine capacity exceeding 75 cubic centimetres	8%
	8711.90	Other	8%
89.03	8903.00	YACHTS AND OTHER VESSELS FOR PLEASURE OR SPORTS; ROWING BOATS AND CANOES	8%
89.07	8907.00	OTHER FLOATING STRUCTURES (FOR EXAMPLE, RAFTS, TANKS, COFFER-DAMS, LANDING-STAGES, BUOYS AND BEACONS)	8%";
(9) sub-heading Nos. 9032.11 and 9032.91 and the entries relating thereto shall be omitted;			
(10) after sub-heading No. 8907.00 and the entries relating thereto, the following shall be inserted, namely:—			
"93.02	9302.00	REVOLVERS AND PISTOLS, OTHER THAN THOSE OF HEADING NO. 93.03 OR 93.04	8%
93.03	9303.00	OTHER FIREARMS AND SIMILAR DEVICES WHICH OPERATE BY THE FIRING OF AN EXPLOSIVE CHARGE (FOR EXAMPLE, SPORTING SHOTGUNS AND RIFLES, MUZZLE-LOADING FIREARMS, VERY PISTOLS AND OTHER DEVICES DESIGNED TO PROJECT ONLY SIGNAL FLARES, PISTOLS AND REVOLVERS FOR FIRING BLANK AMMUNITION, CAPTIVE-BOLT HUMANE KILLERS, LINE-THROWING GUNS)	8%
93.04	9304.00	OTHER ARMS (FOR EXAMPLE, SPRING, AIR OR GAS GUNS AND PISTOLS, TRUNCHEONS), EXCLUDING THOSE OF HEADING NO. 93.07	8%
93.05	9305.00	PARTS AND ACCESSORIES OF ARTICLES OF HEADING NOS. 93.01 TO 93.04	8%
93.06	9306.00	BOMBS, GRENADES, TORPEDOES, MINES, MISSILES AND SIMILAR MUNITIONS OF WAR AND PARTS THEREOF; CARTRIDGES AND OTHER AMMUNITION AND PROJECTILES AND PARTS THEREOF, INCLUDING SHOT AND CARTRIDGE WADS	8%
93.07	9307.00	SWORDS, CUTLASSES, BAYONETS, LANCES AND SIMILAR ARMS AND PARTS THEREOF AND SCABBARDS AND SHEATHS THEREFOR	8%
94.04	9404.00	MATTRESS SUPPORTS; ARTICLES OF BEDDING AND SIMILAR FURNISHING (FOR EXAMPLE, MATTRESSES, QUILTS, EIDER-DOWNS, CUSHIONS, POUFFES AND PILLOWS) FITTED WITH SPRINGS OR STUFFED OR INTERNALLY FITTED WITH ANY MATERIAL OR OF CELLULAR RUBBER OR PLASTICS, WHETHER OR NOT COVERED	8%".

## THE FIFTH SCHEDULE

(See section 114)

In the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act,—

(1) in sub-heading No. 2403.11, for the entry in column (4), the entry "Rs. 37 per thousand" shall be substituted;

(2) in sub-heading No. 2403.12, for the entry in column (4), the entry "Rs. 125 per thousand" shall be substituted;

(3) in sub-heading No. 2403.13, for the entry in column (4), the entry "Rs. 185 per thousand" shall be substituted;

(4) in sub-heading No. 2403.14, for the entry in column (4), the entry "Rs. 300 per thousand" shall be substituted;

(5) in sub-heading No. 2403.15, for the entry in column (4), the entry "Rs. 400 per thousand" shall be substituted;

(6) in sub-heading No. 2403.19, for the entry in column (4), the entry "Rs. 495 per thousand" shall be substituted;

(7) in sub-heading Nos. 5802.51, 5803.00, 5804.11, 5804.12, 5901.10 and 5901.90, for the entry in column (4) occurring against each of them, the entry "8%" shall be substituted.

## THE SIXTH SCHEDULE

(See section 115)

In the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for the "SCHEDULE", the following Schedule shall be substituted, namely:—

## THE SCHEDULE

(See section 3)

Item No.	Description of dutiable goods	Rate of duty
(1)	(2)	(3)
<i>Medicinal preparations</i>		
1.	Allopathic Medicinal Preparations:	
	(i) Medicinal preparations containing alcohol which are not capable of being consumed as ordinary alcoholic beverages—	
	(a) Patent or proprietary medicines	Twenty per cent. <i>ad valorem</i> .
	(b) Others	Twenty per cent. <i>ad valorem</i> .
	(ii) Medicinal preparations containing alcohol which are capable of being consumed as ordinary alcoholic beverages—	
	(a) Medicinal preparations which contain known active ingredients in therapeutic quantities	Twenty per cent. <i>ad valorem</i> .
	(b) Others	Twenty per cent. <i>ad valorem</i> .
	(iii) Medicinal preparations not containing alcohol but containing narcotic drug or narcotic	Twenty per cent. <i>ad valorem</i> .
2.	Medicinal preparations in Ayurvedic, Unani or other indigenous systems of medicine.—	
	(i) Medicinal preparations containing self-generated alcohol which are not capable of being consumed as ordinary alcoholic beverages	Four per cent. <i>ad valorem</i> .
	(ii) Medicinal preparations containing self-generated alcohol which are capable of being consumed as ordinary alcoholic beverages	Four per cent. <i>ad valorem</i> .
	(iii) All other containing alcohol which are prepared by distillation or to which alcohol has been added	Six per cent. <i>ad valorem</i> .
	(iv) Medicinal preparations not containing alcohol but containing narcotic drug or narcotic	Twenty per cent. <i>ad valorem</i> .
3.	Homoeopathic preparations containing alcohol	Four per cent. <i>ad valorem</i> .
<i>Toilet preparations</i>		
4.	Toilet preparations containing alcohol or narcotic drug or narcotic	Fifty per cent. <i>ad valorem</i> .

*Explanation 1*—“Patent or proprietary medicines” means any medicinal preparation which bears either on itself or on its container or both, a name which is not specified in a monograph in a pharmacopoeia, formulary or other publications notified in this behalf by the Central Government in the Official Gazette, or which is a brand name, that is, a name or a registered trade-mark under the Trade and Merchandise Marks Act, 1958 (43 of 1958), or any other mark such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to that medicinal preparation for the purpose of indicating or so as to indicate a connection in the course of trade between the preparation and some person having the right either as proprietor or otherwise to use the name or mark with or without any indication of the identity of that person.



*Explanation II.*—Where any article is chargeable to duty at a rate dependent on the value of the article, such value shall be deemed to be the value as determined in accordance with the provisions of section 4 of the Central Excise Act, 1944 (1 of 1944).

*Explanation III.*—(1) Notwithstanding anything contained in *Explanation II*, the Central Government may, by notification in the Official Gazette, specify any dutiable goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of clause (2) shall apply.

(2) Where dutiable goods specified under clause (1) are chargeable to duty with reference to value, then, notwithstanding anything contained in *Explanation II*, such value shall be deemed to be the retail price declared on such goods less such amount of abatement, if any, from such retail price as the Central Government may allow by notification in the Official Gazette.

(3) The Central Government may, for the purpose of allowing any abatement under clause (2), take into account the duty of excise, sales tax and other taxes, if any, payable on such goods.

(4) Where on the package of any dutiable goods more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of clause (2).

(5) Where different retail sale prices are declared on different packages for the sale of any dutiable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the dutiable goods intended to be sold in the area to which the retail sale price relates.

(6) For the purpose of this *Explanation*, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

Sd/—

SUBHASH C. JAIN,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.



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# The Gujarat Government Gazette

## EXTRAORDINARY

PUBLISHED BY AUTHORITY

VOL. XLI]

WEDNESDAY, DECEMBER 27, 2000 / PAUSA 6, 1922

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

### PART - VI

#### Acts of Parliament and Ordinances Promulgated by the President

##### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/65/2000/Act-12/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 12th May, 2000/Vaisakha 22, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 12th May, 2000, and is hereby published for general information:—

#### THE FOOD CORPORATIONS (AMENDMENT) ACT, 2000

(ACT No. 12 OF 2000)

(12th May, 2000.)

An Act further to amend the Food Corporations Act, 1964.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Food Corporations (Amendment) Act, 2000.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In the Food Corporations Act, 1964, for section 34, the following section shall be substituted, namely:—

Short title  
and com-  
mencement.

Substitution of  
new section for  
section 34 of  
Act 37 of 1964.

Accounts and  
audit.

"34. (1) A Food Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the profit and loss account and the balance-sheet in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of a Food Corporation shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Food Corporation to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of a Food Corporation shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any office of the Food Corporation.

(4) The accounts of a Food Corporation as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually by the Comptroller and Auditor-General of India to,—

(i) the Food Corporation concerned;

(ii) where the accounts relate to a State Food Corporation, also to the Food Corporation of India;

(iii) the Central Government;

and that Government shall, as soon thereafter as may be, cause the same to be laid before both Houses of Parliament."

Sd/-

SUBHASH C. JAIN,  
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
*Secretary to Government.*



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**Acts of Parliament and Ordinances Promulgated by the President**

**LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT**

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/66/2000/Act-13/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS**

**(Legislative Department)**

*New Delhi, the 12th May, 2000/Vaisakha 22, 1922 (Saka)*

The following Act of Parliament received the assent of the President on the 12th May, 2000, and is hereby published for general information:—

**THE SUGARCANE CONTROL (ADDITIONAL POWERS)  
REPEAL ACT, 2000**

(ACT No. 13 OF 2000)

*(12th May, 2000.)*

An Act to repeal the Sugarcane Control (Additional Powers) Act, 1962.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Sugarcane Control (Additional Powers) Repeal Act, 2000. Short title.

2. The Sugarcane Control (Additional Powers) Act, 1962 is hereby repealed.

Repeal of Act  
39 of 1962.

Sd/—

SUBHASH C. JAIN,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.

VI-Ex. 30-1





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# The Gujarat Government Gazette

## EXTRAORDINARY

PUBLISHED BY AUTHORITY

VOL. XLI ]

WEDNESDAY, DECEMBER 27, 2000 / PAUSA 6, 1922

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

### PART - VI

#### Acts of Parliament and Ordinances Promulgated by the President

##### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/67/2000/Act-14/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 24th May, 2000/Jyaishta 3, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 24th May, 2000, and is hereby published for general information:—

#### THE PRESIDENT'S EMOLUMENTS AND PENSION (AMENDMENT) ACT, 2000

(Act No. 14 of 2000)

(24th May, 2000.)

*An Act further to amend the President's Emoluments and Pension Act, 1951.*

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the President's Emoluments and Pension (Amendment) Act, 2000.

Short title and  
commence-  
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

30 of 1951.

2. In the President's Emoluments and Pension Act, 1951 (hereinafter referred to as the principal Act), after section 2, the following section shall be inserted, namely:—

Insertion of  
new section-  
2A.

“2A. The spouse of a person who dies—

(a) while holding the office of President, or—

(b) after ceasing to hold office as President either by the expiration of his term of office or by resignation of his office, shall be paid a family pension at

Family  
pension to  
spouse of  
President.

the rate of fifty per cent. of pension as is admissible to a retiring President, for the remainder of her life.”.

Insertion of  
new section  
3A.  
Free  
accommoda-  
tion to spouse  
of President.

3. After section 3 of the principal Act, the following section shall be inserted, namely:—

“3A. Subject to any rules that may be made in this behalf, the spouse of a person who dies—

(a) while holding the office of President, or

(b) after ceasing to hold office as President either by the expiration of his term of office or by resignation of his office,

shall be entitled to the use of unfurnished residence without payment of licence fee, for the remainder of her life.”.

Sd/—

SUBHASH C. JAIN,  
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.

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GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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## PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/68/2000/Act-15/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

*New Delhi, the 24th May, 2000/Jyaishta 3, 1922 (Saka)*

The following Act of Parliament received the assent of the President on the 24th May, 2000, and is hereby published for general information:—

### THE NATIONAL HOUSING BANK (AMENDMENT) ACT, 2000

(Act No. 15 of 2000)

(24th May, 2000.)

An Act further to amend the National Housing Bank Act, 1987.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the National Housing Bank (Amendment) Act, 2000.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title and  
commence-  
ment.

Amendment of  
section 2.

2. In section 2 of the National Housing Bank Act, 1987 (hereinafter referred to as the principal Act), in clause (d), for the words "its principal object", the words "one of its principal objects" shall be substituted.

Substitution of  
new section for  
section 4.

Capital.

3. For section 4 of the principal Act, the following section shall be substituted, namely:—

"(1) The authorised and paid-up capital of the National Housing Bank shall be three hundred and fifty crores of rupees:

Provided that the Central Government may, in consultation with the Reserve Bank, by notification, increase the authorised capital up to two thousand crores of rupees.

(2) The Board may, on such terms and conditions, as determined by it from time to time, issue the increased authorised capital to the Reserve Bank, the Central Government, scheduled banks, public financial institutions, housing finance institutions or such other institutions, as may be approved by the Central Government:

Provided that no increase in the issued capital shall be made in such manner that the Reserve Bank, the Central Government, public sector banks, public financial institutions or other institutions owned or controlled by the Central Government, hold in aggregate at any time, less than fifty-one per cent. of the issued capital of the National Housing Bank."

Amendment of  
section 5.

4. In section 5 of the principal Act, in sub-section (3), for clauses (a) and (b), the following clauses shall be substituted, namely:—

"(a) the Chairman, if he is a whole-time director or if he is holding offices both as the Chairman and the Managing Director, or

(b) the Managing Director, if the Chairman is not a whole-time director, or if the Chairman being a whole-time director, is absent."

Amendment of  
section 6.

5. In section 6 of the principal Act,—

(a) in sub-section (1),—

(i) in clause (b), for the words "three directors", the words "two directors" shall be substituted;

(ii) for clause (c), the following clauses shall be substituted, namely:—

"(c) two directors, who shall be persons with experience in the working of institutions involved in providing funds for housing or engaged in housing development or have experience in the working of financial institutions or scheduled banks;

(ca) two directors elected in such manner as may be prescribed by shareholders other than the Reserve Bank, the Central Government and other institutions owned or controlled by the Central Government;"

(b) in sub-section (2), for the words, brackets and letter "excluding the directors referred to in clause (d)", the words, brackets and letters "excluding the directors referred to in clauses (ca) and (d)" shall be substituted.

Amendment of  
section 7.

6. In section 7 of the principal Act, in sub-section (2), for the words, brackets and letters "clauses (b) and (c)", the words, brackets and letters "clauses (b), (c) and (ca)" shall be substituted.

Amendment of  
section 14.

7. In section 14 of the principal Act,—

(i) for clause (b), the following clauses shall be substituted, namely:—

"(b) making of loans and advances or rendering any other form of financial assistance whatsoever for housing activities to housing finance



institutions, scheduled banks, state co-operative agricultural and rural development banks or any other institution or class of institutions as may be notified by the Central Government;

(ba) making of loans and advances for housing or residential township-cum-housing development or slum clearance projects;";

(ii) after clause (e), the following clauses shall be inserted, namely:—

"(ea) buying, selling or otherwise dealing in any loans or advances secured by mortgage or charge of the immovable property relating to scheduled banks or housing finance institutions;

(eb) creating one or more trusts and transferring loans or advances together with or without securities therefor to such trusts for consideration;

(ec) setting aside loans or advances held by the National Housing Bank and issuing and selling securities based upon such loans or advances so set aside in the form of debt obligations, trust certificates of beneficial interest or other instruments, by whatever name called, and to act as trustee for the holders of such securities;

(ed) setting up of one or more mutual funds for undertaking housing finance activities;

(ee) undertaking or participating in housing mortgage insurance;";

(iii) for clause (f), the following clause shall be substituted, namely:—

"(f) promoting, forming, conducting or associating in the promotion, formation or conduct of companies, mortgage banks, subsidiaries, societies, trusts or such other association of persons as it may deem fit for carrying out all or any of its functions under this Act;";

8. In section 15 of the principal Act, in sub-section (1),—

(a) in clause (b), for the words "the Central Government", the words "the Central Government, scheduled banks, financial institutions, mutual funds" shall be substituted;

(b) in clause (c), for the words "a period which shall not be less than twelve months from the date of the making of the deposit", the words "such period and" shall be substituted;

(c) in clause (d), for sub-clause (i), the following sub-clause shall be substituted, namely:—

"(i) by way of loans and advances and generally obtain financial assistance in such manner or on such terms and conditions as may be specified by the Reserve Bank;";

9. After section 16 of the principal Act, the following sections shall be inserted, namely:—

"16A. (1) Where any person or institution seeks any financial assistance from the National Housing Bank on the security of any immovable property belonging to him or to that institution or on the security of the property of some other person whose property is offered as a collateral security for such assistance, such person or institution or, as the case may be, such other person may execute a written declaration in the form set out in the Third Schedule to this Act stating therein the particulars of the immovable property which is proposed to be offered as security, or as the case may be, collateral security, for such assistance and agreeing that the dues relating to the assistance, if granted, shall be a charge on such immovable property and, if on

Amendment of  
section 15.

Insertion of  
new sections  
16A and 16B.

Assistance to  
borrower when  
to operate or a  
charge in the  
property  
offered as  
security.

receipt of such declaration, the National Housing Bank grants any financial assistance to the person or institution aforesaid, the dues relating to such assistance shall, without prejudice to the rights of any other creditor holding any prior charge or mortgage in respect of the immovable property so specified, be, by virtue of the provisions of this section, a charge on the property specified in the declaration aforesaid.

(2) Where any further immovable property is offered by a person or an institution as security for the financial assistance referred to in sub-section (1), such person or institution may execute a fresh declaration, as far as may be in the form set out in the Third Schedule to this Act, whereupon the dues relating to such assistance shall, by virtue of the provisions of this section, also be a charge on the property specified in such fresh declaration.

(3) A declaration made under sub-section (1) or sub-section (2) may be varied or revoked at any time by the person or institution as aforesaid, with the prior approval of the National Housing Bank.

(4) Every declaration made under sub-section (1) or sub-section (2) shall be deemed to be a document registrable as an agreement under the provisions of the Registration Act, 1908 and no such declaration shall have effect unless it is so registered.

16 of 1908.

Amount and security to be held in trust.

16B. (1) Any sums received by a borrowing institution in repayment or realisation of loans and advances financed or refinanced either wholly or partly by the National Housing Bank shall, to the extent of the accommodation granted by the National Housing Bank and remaining outstanding, be deemed to have been received by the borrowing institution in trust for the National Housing Bank, and shall accordingly be paid by such institution to the National Housing Bank.

(2) Where any accommodation has been granted by the National Housing Bank to a borrowing institution, all securities held, or which may be held, by such borrowing institution on account of any transaction in respect of which such accommodation has been granted, shall be held by such institution in trust for the National Housing Bank."

Amendment of section 18.

10. In section 18 of the principal Act, for the words "housing finance institution", the word "institution" shall be substituted.

Insertion of new sections 18A and 18B.

11. After section 18 of the principal Act, the following sections shall be inserted, namely:—

Exemption from registration.

"18A. Notwithstanding anything contained in sub-section (1) of section 17 of the Registration Act, 1908,—

16 of 1908.

(a) any instrument in the form of debt obligations or trust certificate of beneficial interest or other instruments, by whatever name called, issued by the National Housing Bank to securities the loans granted by the housing finance institutions and scheduled banks, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to an undivided interest afforded by a registered instrument, whereby the National Housing Bank has acquired the rights and interests in relation to such loans and in securities therefor; or

(b) any transfer of such instruments referred to in clause (a),

shall not require compulsory registration.

Recovery of dues as arrears of land revenue.

18B. Where any amount is due under an agreement to the National Housing Bank, whether acting as a trustee or otherwise, in respect of securitisation of loans of housing finance institutions and scheduled banks, the National Housing Bank may without prejudice to any other mode of recovery make an application to the State

Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied that any amount is due, it may issue a certificate for the amount to the Collector and the Collector shall proceed to recover that amount in the same manner as arrears of land revenue."

12. In sections 19 to 25 of the principal Act, for the words "housing finance institutions", wherever they occur, the word "institutions" shall be substituted.

Amendment of sections 19 to 25.

13. After section 29 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 29A to 29C.

"29A. (1) Notwithstanding anything contained in this Chapter or in any other law for the time being in force, no housing finance institution which is a company shall commence or carry on the business of a housing finance institution without—

Requirement of registration and net owned fund.

(a) obtaining a certificate of registration issued under this Chapter; and

(b) having the net owned fund of twenty-five lakh rupees or such other higher amount, as the National Housing Bank may, by notification, specify.

(2) Every such housing finance institution shall make an application for registration to the National Housing Bank in such form as may be specified by the National Housing Bank:

Provided that a housing finance institution which is a company in existence on the commencement of the National Housing Bank (Amendment) Act, 2000, shall make an application for registration to the National Housing Bank before the expiry of six months from such commencement and notwithstanding anything contained in sub-section (1), may continue to carry on the business of housing finance institution until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

(3) Notwithstanding anything contained in sub-section (1), a housing finance institution which is a company in existence on the commencement of the National Housing Bank (Amendment) Act, 2000, and having a net owned fund of less than twenty-five lakh rupees, may, for the purpose of enabling such institution to fulfil the requirement of the net owned fund, continue to carry on the business of a housing finance institution—

(i) for a period of three years from such commencement; or

(ii) for such further period as the National Housing Bank may, after recording the reasons in writing for so doing, extend,

subject to the conditions that such institution shall, within three months of fulfilling the requirement of the net owned fund, inform the National Housing Bank about such fulfilment:

Provided that the period allowed to continue business under this sub-section shall in no case exceed six years in the aggregate.

(4) The National Housing Bank, for the purpose of considering the application for registration, may require to be satisfied by an inspection of the books of such housing finance institution or otherwise that the following conditions are fulfilled:—

(a) that housing finance institution is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;

(b) that the affairs of the housing finance institution are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;

(c) that the general character of the management or the proposed management of the housing finance institution shall not be prejudicial to the public interest or the interests of its depositors;

(d) that the housing finance institution has adequate capital structure and earning prospects;

(e) that the public interest shall be served by the grant of certificate of registration to the housing finance institution to commence or to carry on the business in India;

(f) that the grant of certificate of registration shall not be prejudicial to the operation and growth of the housing finance sector of the country; and

(g) any other condition, fulfilment of which in the opinion of the National Housing Bank, shall be necessary to ensure that the commencement of or carrying on the business in India by a housing finance institution shall not be prejudicial to the public interest or in the interests of the depositors.

(5) The National Housing Bank may, after being satisfied that the conditions specified in sub-section (4) are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

(6) The National Housing Bank may cancel a certificate of registration granted to a housing finance institution under this section if such institution—

(i) ceases to carry on the business of a housing finance institution in India; or

(ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or

(iii) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4); or

(iv) fails—

(a) to comply with any direction issued by the National Housing Bank under the provisions of this Chapter; or

(b) to maintain accounts in accordance with the requirement of any law or any direction or order issued by the National Housing Bank under the provisions of this Chapter; or

(c) to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the National Housing Bank; or

(v) has been prohibited from accepting deposit by an order made by the National Housing Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months:

Provided that before cancelling a certificate of registration on the ground that the housing finance institution has failed to comply with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4), the National Housing Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the housing finance institution, shall give an opportunity to such institution on such terms as the National Housing Bank may specify for taking necessary steps to comply with such provision or fulfilment of such condition:

Provided further that before making any order of cancellation of certificate of registration, such institution shall be given a reasonable opportunity of being heard.



(7) A housing finance institution aggrieved by the order or rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the National Housing Bank where no appeal has been preferred, shall be final:

Provided that before making any order of rejection of appeal, such institution shall be given a reasonable opportunity of being heard.

*Explanation.*—For the purposes of this section,—

(I) "net owned fund" means—

(a) the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance-sheet of the housing finance institution after deducting therefrom—

(i) accumulated balance of loss;

(ii) deferred revenue expenditure; and

(iii) other intangible assets; and

(b) further reduced by the amounts representing—

(I) investments of such institution in shares of—

(i) its subsidiaries;

(ii) companies in the same group;

(iii) all other housing finance institutions which are companies; and

(2) the book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with,—

(i) subsidiaries of such company; and

(ii) companies in the same group, to the extent such amount exceeds ten per cent. of (a) above;

(II) "subsidiaries" and "companies in the same group" shall have the same meanings assigned to them in the Companies Act, 1956.

1 of 1956.

29B. (1) Every housing finance institution shall invest and continue to invest in India in unencumbered approved securities, valued at a price not exceeding the current market price of such securities, an amount which, at the close of business on any day, shall not be less than five per cent. or such higher percentage not exceeding twenty-five per cent. as the National Housing Bank may, from time to time and by notification, specify, of the deposits outstanding at the close of business on the last working day of the second preceding quarter.

Maintenance of percentage of assets.

(2) Every housing finance institution shall maintain in India in an account with a scheduled bank in term deposits or certificate of deposits (free of charge or lien) or in deposits with the National Housing Bank or by way of subscription to the bonds issued by the National Housing Bank, or partly in such account or in such deposit or partly by way of such subscription, a sum which, at the close of business on any day, together with the investment made under sub-section (1) shall not be less than ten per cent. or such higher percentage not exceeding twenty-five per cent., as the National Housing Bank may, from time to time and by notification specify, of the deposits outstanding in the books of the housing finance institution at the close of business on the last working day of the second preceding quarter.

(3) For the purpose of ensuring compliance with the provisions of this section, the National Housing Bank may require every such housing finance institution to furnish a return to it in such form, in such a manner and for such period as may be specified by the National Housing Bank.

(4) If the amount invested by a housing finance institution at the close of business on any day is less than the rate specified under sub-section (1) or sub-section (2), such housing finance institution shall be liable to pay to the National Housing Bank, in respect of such shortfall, a penal interest at a rate of three per cent. per annum above the bank rate on such amount by which the amount actually maintained or invested falls short of the specified percentage, and where the shortfall continues in the subsequent quarters, the rate of penal interest shall be five per cent. per annum above the bank rate on such shortfall for each subsequent quarter.

(5) (a) The penal interest payable under sub-section (4) shall be payable within a period of fourteen days from the date on which a notice issued by the National Housing Bank demanding payment of the same is served on the housing finance institution and, in the event of a failure of the housing finance institution to pay the same within such period, may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting housing finance institution is situated and such direction shall be made only upon an application made in this behalf to the court by the National Housing Bank; and

(b) When the court makes a direction under clause (a), it shall issue a certificate specifying the sum payable by the housing finance institution and every such certificate shall be enforceable in the manner as if it were a decree made by the court in a suit.

(6) Notwithstanding anything contained in this section, if the National Housing Bank is satisfied that the defaulting housing finance institution had sufficient cause for its failure to comply with the provisions of sub-section (1) or sub-section (2), it may not demand the payment of the penal interest.

*Explanation.*—For the purposes of this section,—

(i) "approved securities" means securities of any State Government or of the Central Government and such bonds, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government;

(ii) "unencumbered approved securities" includes the approved securities lodged by the housing finance institution with another institution for an advance or any other arrangement to the extent to which such securities have not been drawn against or availed of or encumbered in any manner;

(iii) "quarter" means the period of three months ending on the last day of March, June, September or December.

Reserve fund.

29C. (1) Every housing finance institution which is a company shall create a reserve fund and transfer therein a sum not less than twenty per cent. of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

*Explanation.*—A housing finance institution creating and maintaining any special reserve in terms of clause (viii) of sub-section (1) of section 36 of the Income-tax Act, 1961, may take into account any sum transferred by it for the year to such special reserve for the purposes of this sub-section.

43 of 1961.

(2) No appropriation of any sum from the reserve fund including any sum in the special reserve which has been taken into account for the purposes of reserve fund in terms of sub-section (1), shall be made by such housing finance institution except for

the purpose as may be specified by the National Housing Bank from time to time and every such appropriation shall be reported to the National Housing Bank within twenty-one days from the date of such withdrawal:

Provided that the National Housing Bank may, in any particular case and for sufficient cause being shown, extend the period of twenty-one days by such further period as it thinks fit or condone any delay in making such report.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, on the recommendation of the National Housing Bank and having regard to the adequacy of the paid-up capital and reserves of a housing finance institution which is a company in relation to its deposit liabilities, declare by order in writing that the provisions of sub-section (1) shall not be applicable to such housing finance institution for such period as may be specified in the order:

Provided that no such order shall be made unless the amount in the reserve fund under sub-section (1), together with the amount in the share premium account, is not less than the paid-up capital of the housing finance institution."

14. After section 30 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 30A.

"30A. (1) If the National Housing Bank is satisfied that, in the public interest or to regulate the housing finance system of the country to its advantage or to prevent the affairs of any housing finance institution being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the housing finance institutions, it is necessary or expedient so to do, it may subject to the provisions of sub-section (5) of section 5, determine the policy and give directions to all or any of the housing finance institution relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance-sheet items and also relating to deployment of funds by a housing finance institution or a group of housing finance institutions or housing finance institutions generally, as the case may be, and such housing finance institutions shall be bound to follow the policy so determined and the direction so issued.

Power of National Housing Bank to determine policy and issue directions.

(2) Without prejudice to the generality of the powers vested under sub-section (1), the National Housing Bank may give directions to housing finance institutions generally or to a group of housing finance institutions or to any housing finance institution in particular as to—

(a) the purpose for which advances or other fund-based or non-fund-based accommodation may not be made; and

(b) the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the housing finance institution and other relevant considerations, may be made by that housing finance institution to any person or a company or to a group of companies."

15. In section 31 of the principal Act, in sub-section (3), after the word "including", the words "credit rating of the housing finance institution accepting deposits," shall be inserted.

Amendment of section 31.

16. In section 33 of the principal Act,—

Amendment of section 33.

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) The National Housing Bank may, on being satisfied that it is necessary so to do, in the public interest or in the interest of the depositors or for the purpose of proper assessment of the books of account, issue directions

to any housing finance institution or any group of housing finance institutions or housing finance companies generally or to the auditors of such housing finance institution or institutions relating to balance-sheet, profit and loss account, disclosure of liabilities in the books of account or any matter relating thereto.";

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Where the National Housing Bank is of the opinion that it is necessary so to do in the public interest or in the interest of the housing finance institution or in the interest of the depositors of such institution, it may at any time by order, direct that a special audit of the accounts of the housing finance institution in relation to any such transaction or class of transactions or for such period or periods, as may be specified in the order, shall be conducted and the National Housing Bank may appoint an auditor or auditors to conduct such special audit and direct the auditor or the auditors to submit the report to it.

(4) The remuneration of the auditors as may be fixed by the National Housing Bank, having regard to the nature and volume of work involved in the audit and the expenses of or incidental to the audit, shall be borne by the housing finance institution so audited."

Insertion of  
new sections  
33A and 33B.

17. After section 33 of the principal Act, the following sections shall be inserted, namely:—

Power of  
National  
Housing Bank  
to prohibit  
acceptance of  
deposit and  
alienation of  
assets.

"33A. (1) If any housing finance institution violates the provisions of any section or fails to comply with any direction or order given by the National Housing Bank under any of the provisions of this Chapter, the National Housing Bank may prohibit the housing finance institution from accepting any deposit.

(2) Notwithstanding anything to the contrary contained in any agreement or instrument or any law for the time being in force, the National Housing Bank on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the housing finance institution against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the National Housing Bank for such period not exceeding six months from the date of the order.

Power of  
National  
Housing Bank  
to file winding  
up petition.

33B. (1) The National Housing Bank, on being satisfied that a housing finance institution which is a company,—

(a) is unable to pay its debt; or

(b) has by virtue of the provisions of section 29A become disqualified to carry on the business of a housing finance institution; or

(c) has been prohibited by the National Housing Bank from receiving deposit by an order and such order has been in force for a period of not less than three months; or

(d) the continuance of the housing finance institution is detrimental to the public interest or to the interest of depositors of the company,

may file an application for winding up of such housing finance institution under the Companies Act, 1956.

1 of 1956.

(2) A housing finance institution which is a company shall be deemed to be unable to pay its debt if it has refused or has failed to meet within five working days any lawful demand made at any of its offices or branches and the National Housing Bank certifies in writing that such company is unable to pay its debt.



(3) A copy of every application made by the National Housing Bank under sub-section (1) shall be sent to the Registrar of Companies.

1 of 1956.

(4) All the provisions of the Companies Act, 1956 relating to winding up of a company shall apply to a winding up proceeding initiated on the application made by the National Housing Bank under this provision."

18. After section 35 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 35A and 35B.

"35A. (1) Any information relating to a housing finance institution,—

Disclosure of information.

(a) contained in any statement or return submitted by such institution under the provisions of this Chapter; or

(b) obtained through audit or inspection or otherwise by the National Housing Bank,

shall be treated as confidential and shall not, except otherwise provided in this section, be disclosed.

(2) Nothing in this section shall apply to—

(a) the disclosure by any housing finance institution, with the previous permission of the National Housing Bank, of any information furnished to the National Housing Bank under sub-section (1);

(b) the publication by the National Housing Bank, if it considers necessary in the public interest so to do, of any information collected by it under sub-section (1) in such consolidated form as it may think fit without disclosing the name of any housing finance institution or its borrowers;

(c) the disclosure by the housing finance institution or by the National Housing Bank of any such information to any other housing finance institution or in accordance with the practice and usage customary amongst such institutions or as permitted or required under any other law:

Provided that any such information received by a housing finance institution under this clause shall not be published except in accordance with the practice and usage customary amongst institutions or as permitted or required under any other law.

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, the National Housing Bank, if it is satisfied that, in the public interest or in the interest of the depositors or the housing finance institution or to prevent the affairs of any housing finance institution being conducted in a manner detrimental to the interest of the depositors, it is expedient so to do, may, either on its own motion or on being requested, furnish or communicate any information relating to the conduct of business by any housing finance institution to any authority constituted under any law.

(4) Notwithstanding anything contained in any other law for the time being in force, no court or tribunal or other authority shall compel the National Housing Bank to produce or to give inspection of any statement or other material obtained by the National Housing Bank under any provision of this Chapter.

35B. The National Housing Bank on being satisfied that it is necessary so to do, may, declare by notification that any or all the provisions of this Chapter shall not apply to a housing finance institution or a group of housing finance institutions either generally or for such period as may be specified, subject to such conditions, limitations or restrictions as it may think fit to impose."

Power of National Housing Bank to exempt any housing finance institution.

Insertion of  
new sections  
36A and 36B.

Power to order  
repayment of  
deposit.

Nomination by  
depositors.

19. After section 36 of the principal Act, the following sections shall be inserted, namely:—

"36A. (1) Every deposit accepted by a housing finance institution which is a company unless renewed, shall be repaid in accordance with the terms and conditions of such deposit.

(2) Where a housing finance institution which is a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, such officer of the National Housing Bank, as may be authorised by the Central Government for the purpose of this section (hereinafter referred to as the "authorised officer") may, if he is satisfied, either on his own motion or on any application of the depositor, that it is necessary so to do to safeguard the interests of the housing finance institution, the depositors or in the public interest, direct, by order, such housing finance institution to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that the authorised officer may, before making any order under this sub-section, give a reasonable opportunity of being heard to the housing finance institution and the other persons interested in the matter.

36B. (1) Where a deposit is held by a housing finance institution to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate, in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949 one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the housing finance institution.

10 of 1949.

(2) Notwithstanding anything contained in any other law for the time being in force, or in any deposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made purports to confer on any person the right to receive the amount of deposit from the housing finance institution, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949.

10 of 1949.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint, in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949, any person to receive the amount of deposit in the event of his death during the minority of the nominee.

10 of 1949.

(4) Payment by a housing finance institution in accordance with the provisions of this section shall constitute a full discharge to the housing finance institution of its liability in respect of the deposit:

Provided that nothing contained in this sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section.

(5) No notice of the claim of any person, other than the person or persons in whose name a deposit is held by the housing finance institution, shall be receivable by the housing finance institution, nor shall the housing finance institution be bound by any such notice even though expressly given to it:

Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to such deposit is produced before a housing finance institution, the housing finance institution shall take due note of such decree, order, certificate or other authority."

20. After Chapter V of the principal Act, the following Chapter shall be inserted, namely:—

Insertion of  
new Chapter  
VA.

#### CHAPTER VA

##### OTHER PROVISIONS RELATING TO HOUSING FINANCE INSTITUTIONS

36C. In this Chapter, unless the context otherwise requires,—

Definitions.

(a) "Appellate Tribunal" means the Appellate Tribunal established under section 36-I;

(b) "approved institution" means—

(i) a housing finance institution which has been granted a certificate of registration under sub-section (5) of section 29A;

(ii) a scheduled bank;

(iii) National Housing Bank acting as trustee or otherwise in a transaction of securitisation of housing mortgages undertaken by the National Housing Bank;

(iv) such other institutions as the Central Government may, on the recommendation of the National Housing Bank, by notification, specify;

(c) "assistance" means any direct or indirect financial assistance granted, by an approved institution during the course of any housing finance activity undertaken by it;

(d) "borrower" means any person to whom any assistance has been given by an approved institution for the purposes of purchase, construction, repairs, extension or renovation of a residential house;

(e) "dues" means any liability which is claimed as due from any person by an approved institution and includes interest, costs, charges and other amount payable in relation thereto;

(f) "recovery officer" means an officer appointed under section 36D.

36D. (1) The Central Government may, in consultation with the National Housing Bank, by notification appoint such persons being the officers of the approved institution, as it may deem fit, to be recovery officers for the purpose of this Chapter who shall have such qualifications as the Central Government may by rules made under this Act specify.

Appointment  
of recovery  
officer.

(2) The local limits within which the recovery officer shall exercise the powers conferred and perform the duties imposed on by or under this Chapter shall be such as may be specified by the Central Government by notification.

36E. (1) Where any borrower, who is under a liability to an approved institution under an agreement, makes any default in repayment of any assistance or any instalment thereof or otherwise fails to comply with the terms of said agreement, then, without prejudice to the provisions of section 69 of the Transfer of Property Act, 1882, the approved institution may apply, to the recovery officer within the limits of whose jurisdiction the borrower actually and voluntarily resides, or carries on business, or personally works for gain, or the cause of action wholly or in part arises, for the sale of the property pledged, mortgaged, hypothecated or assigned to the approved institution as security for the dues.

Application to  
the recovery  
officer.

(2) Where an approved institution, which has to recover its dues from any borrower, has filed an application to the recovery officer under sub-section (1) and the same property is also pledged, mortgaged, hypothecated or assigned to another

approved institution or person, the other approved institution or person may join the approved institution at any stage of the proceedings, before the final order is passed, by making an application to that recovery officer.

(3) In the application under sub-section (1) or sub-section (2), the nature and extent of the liability of the borrower to the approved institution or person, the grounds on which it is made shall be stated and be in such form and be accompanied by such documents or other evidence as may be prescribed.

Procedure in  
respect of  
application  
under section  
36E.

36E. (1) On receipt of an application under section 36E, if the recovery officer is of opinion that the borrower is under a liability to an approved institution under an agreement, or has made default in repayment of the assistance or any instalment thereof or has otherwise failed to comply with the terms of said agreement, he shall cause a written notice of demand in such form as may be prescribed to be served on the borrower, calling upon him to pay the amount specified in the notice within a period of ninety days from the date of service thereof or to show cause as to why the relief prayed for should not be granted.

(2) The recovery officer may after giving the applicant and the borrower an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

(3) The recovery officer may also consider and if satisfied, allow any claim of set-off or counter-claim set up by the borrower against the approved institution or person.

(4) The recovery officer shall supply a copy of every order passed by it to the approved institution and the borrower.

(5) The recovery officer may make an interim order (whether by way of injunction or stay or attachment) against the borrower to debar him from transferring, alienating or otherwise dealing with or disposing of any property which is pledged, mortgaged, hypothecated or assigned to the approved institution as security for the dues.

(6) The application made to the recovery officer under section 36E shall be dealt with by him as expeditiously as possible and endeavour shall be made by him to dispose of the application finally within six months from the date of receipt of the application.

Enforcement  
of order of  
recovery  
officer.

36G. (1) Where the borrower refuses or fails to comply with the order within the time specified therein the recovery officer may, take possession of any property pledged, mortgaged, hypothecated or assigned to the approved institution as security for any assistance in respect of which default has been made and transfer by way of sale, lease or otherwise such property.

(2) Any transfer by way of sale, lease or otherwise under this section shall be conducted in such manner as may be prescribed.

(3) Any transfer of property made by the recovery officer, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred, as if the transfer has been made by the owner of the property.

(4) Where any action has been taken against the borrower under the provisions of sub-section (1), all costs, charges, expenses which in the opinion of the recovery officer have been properly incurred by him as incidental thereto, shall be recoverable from the borrower and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and secondly, in discharge of debt, due to the approved institution, and the residue of the money so received shall be paid to the person entitled thereto.



(5) If the dues of the approved institution, together with all costs, charges and expenses incurred by the recovery officer, are tendered to the approved institution or to the recovery officer at any time before the date fixed for sale or transfer, the property shall not be sold or transferred, and no further steps shall be taken for transfer or sale of that property.

36H. (1) Where any property is sold or leased in pursuance of any power conferred by section 36E, the recovery officer may, for the purpose of taking into custody or under control any such property, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such property or other documents relating thereto may be situated or found to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him,—

Chief Metropolitan Magistrate and District Magistrate to assist recovery officer in taking charge of property.

(a) take possession of such property and documents relating thereto; and

(b) forward them to the recovery officer.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

36-I. (1) The Central Government shall, by notification, establish one or more Appellate Tribunals, to be known as the Housing Finance Institutions Debt Recovery Appellate Tribunals, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

Establishment of Appellate Tribunal.

(2) The Central Government shall also specify in the notification referred to in sub-section (1), the areas in relation to which the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Central Government may authorise the Presiding Officer of an Appellate Tribunal to discharge also the functions of the Presiding Officer of other Appellate Tribunal.

36J. An Appellate Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer of the Appellate Tribunal) to be appointed, by notification, by the Central Government.

Composition of Appellate Tribunal.

36K. A person shall not be qualified for appointment as the Presiding Officer of an Appellate Tribunal, unless he—

Qualifications for appointment as Presiding Officer of Appellate Tribunal.

(a) is, or has been, or is qualified to be a District Judge;

(b) has been a Member of the Indian Legal Service and has held a post in Grade II of that Service for at least three years.

36L. The Presiding Officer of an Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

Term of office.

36M. (1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as that Government may think fit.

Staff of Appellate Tribunal.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Presiding Officer.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as the Central Government may by rules made under this Act specify.

Salaries and allowances and other terms and conditions of service of Presiding Officers.

36N. The salary and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Presiding Officer of an Appellate Tribunal shall be such as the Central Government may by rules made under this Act specify:

Filling up of vacancies.

Provided that neither the salary and allowances nor the other terms and conditions of a Presiding Officer shall be varied to his disadvantage after appointment.

36O. If, for any reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of an Appellate Tribunal, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Resignation and removal.

36P. (1) The Presiding Officer of an Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the said Presiding Officer shall, unless he is permitted by the Central Government, to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

(2) The Presiding Officer of an Appellate Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after enquiry made by a Judge of a High Court in which the Presiding Officer concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the charges.

(3) The Central Government may, by rules made under this Act, regulate the procedure for the investigation of misbehaviour or incapacity of the aforesaid Presiding Officer.

Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings.

36Q. No order of the Central Government appointing any person as the Presiding Officer of an Appellate Tribunal shall be called in question in any manner, and no act or proceeding before an Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the establishment of an Appellate Tribunal.

Jurisdiction, powers and authority of Appellate Tribunal.

36R. An Appellate Tribunal shall exercise the jurisdiction, powers and authority to entertain appeals against any order made or deemed to have been made by the recovery officer under this Act.

Appeal to the Appellate Tribunal.

36S. (1) Any person aggrieved by an order made or deemed to have been made by the recovery officer under this Chapter, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made or deemed to have been made by the recovery officer is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned recovery officer.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of the receipt of the appeal.

36T. Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent. of the amount due from him as determined by the recovery officer:

Deposit of amount due, on filing appeal.

Provided that the Appellate Tribunal may, for the reasons to be recorded in writing, waive or reduce the amount to be deposited under this section:

36U. (1) The recovery officer and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any regulations, the recovery officer and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

Procedure and powers of recovery officer and Appellate Tribunal.

(2) The recovery officer and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; and

(h) any other matter which may be prescribed.

(3) Any proceeding before the recovery officer or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the recovery officer or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

36V. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an application made to recovery officer.

Limitation.

36W. The Presiding Officer, other officers and employees of an Appellate Tribunal and the recovery officer shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Presiding Officer, recovery officer, other officers and employees to be public servant.

Protection of  
action taken in  
good faith.

36X. No suit, prosecution or other legal proceedings shall lie against the Central Government or against the Presiding Officer of an Appellate Tribunal or against the recovery officer for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or any rule or regulation or order made thereunder.

Bar of  
jurisdiction.

36Y. No Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in this Chapter.

Transitional  
provisions.

36Z. Notwithstanding anything contained in this Act, till the establishment of the Appellate Tribunal under section 36-I for any area, the Appellate Tribunal established under section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and which is functioning in that area shall exercise the jurisdiction, powers and authority conferred on the Appellate Tribunal under this Act.

51 of 1993.

Amendment of  
section 40.

21. In section 40 of the principal Act, in sub-section (5), for the words "three months", the words "four months" shall be substituted.

Insertion of  
new section  
43A.

22. After section 43 of the principal Act, the following section shall be inserted, namely:—

Delegation of  
powers.

"43A. The Board may, by general or special order, delegate to an officer or officers of the National Housing Bank, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Act as it may deem necessary."

Insertion of  
new section  
45A.

23. After section 45 of the principal Act, the following section shall be inserted, namely:—

Arrangement  
with National  
Housing Bank  
on appoint-  
ment of  
directors to  
prevail.

"45A. (1) Where any arrangement entered into by the National Housing Bank with a housing finance institution which is a company provides for the appointment by the National Housing Bank of one or more directors of such housing finance institution, such provision and any appointment of directors made in pursuance thereof shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956 or in any other law for the time being in force or in the memorandum, articles of association or any other instrument relating to that housing finance institution, or any provision regarding share qualification, age limit, number of director-ships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any director appointed by the National Housing Bank in pursuance of the arrangement as aforesaid.

1 of 1956.

(2) Any director appointed as aforesaid shall—

(a) hold office during the pleasure of the National Housing Bank and may be removed or substituted by any person by order in writing of the National Housing Bank;

(b) not incur any obligation or liability by reasons only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement."



24. After section 47 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 47A.

"47A. (1) Notwithstanding anything contained in any other law for the time being in force, where a nomination in respect of any deposit, bonds or other securities is made with the National Housing Bank in the prescribed manner, the amount due on such deposits, bonds or securities shall, on the death of the depositor or holder thereof, vest in, and be payable to, the nominee subject to any right, title or interest of any other person to such deposits, bonds or securities.

Nomination in respect of deposits, bonds, etc.

(2) Any payment made by the National Housing Bank in accordance with the provisions of sub-section (1) shall be a full discharge of its liability in respect of such deposits, bonds or securities."

25. In section 49 of the principal Act,—

(a) after sub-section (2), the following sub-sections shall be inserted, namely:—

Amendment of section 49.

"(2A) If any person contravenes the provisions of sub-section (1) of section 29A, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(2B) If any auditor fails to comply with any direction given or order made by the National Housing Bank under section 33, he shall be punishable with fine which may extend to five thousand rupees.

(2C) Whoever fails to comply with any order made by the authorised officer under sub-section (2) of section 36A, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues;

(b) in sub-section (3),—

(i) after the words "If any person", the words "other than an auditor" shall be inserted;

(ii) after clause (a), the following clause shall be inserted, namely:—

"(aa) fails to comply with any direction given or order made by the National Housing Bank under any of the provisions of Chapter V; or".

26. For section 52 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for section 52.

"52. A court imposing fine under the Act may direct that the fine, if realised shall be applied—

Application of fine.

(a) firstly in, or towards payment of, the cost of the proceedings, and

(b) secondly for repayment of the deposit to the person to whom repayment of the deposit was to be made, and on such payment, the liability of the housing finance institution to make repayment of the deposit shall, to the extent of the amount paid by the Court, stand discharged.

52A. (1) Notwithstanding anything contained in section 49, if the contravention or default of the nature referred to in section 49 is committed by a housing finance institution which is a company, the National Housing Bank may impose on such institution—

Power of National Housing Bank to impose fine.

(a) a penalty not exceeding five thousand rupees; or

(b) where the contravention or default is under sub-section (2A) or clause (a) or clause (aa) of sub-section (3) of section 49, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default, where the amount is quantifiable, whichever is more; and where such contravention or default is a continuing one, further penalty which may extend to twenty-five thousand rupees for every day, after the first, during which the contravention or default continues.

(2) For the purpose of imposing penalty under sub-section (1), the National Housing Bank shall serve a notice on the housing finance institution requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such housing finance institution.

(3) Any penalty imposed by the National Housing Bank under this section shall be payable within a period of thirty days from the date on which notice issued by the National Housing Bank demanding payment of the sum is served on the housing finance institution and, in the event of failure of the housing finance institution to pay the sum within such period, may be levied on a direction made by the principal civil court having jurisdiction in the area where the registered office or the head office of the housing finance institution is situated:

Provided that no such direction shall be made, except on an application made by an officer of the National Housing Bank authorised in this behalf, to the principal civil court.

(4) The court which makes a direction under sub-section (3), shall issue a certificate specifying the sum payable by the housing finance institution and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a civil suit.

(5) No complaint shall be filed against any housing finance institution in any court of law pertaining to any contravention or default in respect of which any penalty has been imposed by the National Housing Bank under this section.

(6) Where any complaint has been filed against a housing finance institution in a court in respect of contravention or default of the nature referred to in section 49, no proceedings for imposition of penalty against the housing finance institution shall be taken under this section."

Insertion of  
new section  
54A.

Power to make  
rules.

27. After section 54 of the principal Act, the following section shall be inserted, namely:—

"54A. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) qualifications for appointment as a recovery officer under sub-section (1) of section 36D;

(b) the salaries and allowances and other terms and conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 36M;

(c) the salaries and allowances and other terms and conditions of service of the Presiding Officers of the Appellate Tribunal under section 36N; and

(d) the procedure for the investigation of misbehaviour or incapacity of the Presiding Officers of the Appellate Tribunals under sub-section (3) of section 36P."

Amendment of  
section 55.

28. In section 55 of the principal Act,—

(A) in sub-section (2),—

(i) after clause (a), the following clause shall be inserted, namely:—

"(aa) the manner in which directors shall be elected under clause (ca) of sub-section (1) of section 6;"

(ii) after clause (f), the following clauses shall be inserted, namely:—

"(fa) the form of application to be made under section 36E and the documents to be annexed to such application;

(fb) the form in which notice of demand is required to be served on the borrower under sub-section (1) of section 36F;

(fc) the manner in which the property shall be transferred under sub-section (2) of section 36G;

(fd) the form in which the appeal can be filed with the Appellate Tribunal under section 36S and the amount of fee required to be deposited with such appeal;";

(iii) after clause (j), the following clause shall be inserted, namely:—

"(ja) the manner in which nomination may be made under sub-section (1) of section 47A.";

(B) in sub-section (5), for the words "regulation or scheme", wherever they occur, the words "rules, regulation or scheme" shall be substituted.

29. After the Second Schedule to the principal Act, the following Schedule shall be added at the end, namely:—

Addition of new Schedule.

### "THE THIRD SCHEDULE

(See section 16A)

DECLARATION REFERRED TO IN SECTION 16A OF THE NATIONAL HOUSING BANK ACT, 1987

Place

Date:

I/we \_\_\_\_\_ hereby declare that in consideration of the assistance sanctioned by the National Housing Bank to me/us at my/our request, as specified in the Annexure hereto, I/we agree that the immovable property specified in the said Annexure shall constitute security for the said assistance and I/we further agree that the dues relating to the assistance mentioned above, shall, on and from the date of these presents, be a charge on the said immovable property.

1. Signed and delivered by

.....  
(Borrower)

2. Signed and delivered by

.....  
(Surety)

### ANNEXURE

I. Details of assistance.

II. Particulars of immovable property."

Sd/—

SUBHASH C. JAIN,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.



सत्यमेव जयते

# The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/69/2000/Act-16/2000/E.—The following Act of Parliament is republished  
general information:—

GOVERNMENT OF INDIA

### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 25th May, 2000/Jyaishta 4, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 25th May, 2000, and is hereby published for general information :—

### THE DESIGNS ACT, 2000

(ACT No. 16 OF 2000)

(25th May, 2000.)

*An Act to consolidate and amend the law relating to protection of designs.*

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

#### CHAPTER I

#### PRELIMINARY

1. (1) This Act may be called the Designs Act, 2000.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "article" means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately;

Short title,  
extent and  
commence-  
ment.

Definitions.



(b) "Controller" means the Controller-General of Patents, Designs and Trade Marks referred to in section 3;

(c) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered;

(d) "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957.

43 of 1958.

45 of 1860.

14 of 1957.

(e) "High Court" shall have the same meaning as assigned to it in clause (i) of section 2 of the Patents Act, 1970;

39 of 1970.

(f) "legal representative" means a person who in law represents the estate of a deceased person;

(g) "original", in relation to a design, means originating from the author of such design and includes the cases which though old in themselves yet are new in their application;

(h) "patent office" means the patent office referred to in section 74 of the Patents Act, 1970.

39 of 1970.

(i) "prescribed" means prescribed by rules made under this Act;

(j) "proprietor of a new or original design",—

(i) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed;

(ii) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

(iii) in any other case, means the author of the design; and where the property in or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

## CHAPTER II

### REGISTRATION OF DESIGNS

Controller and other officers.

3. (1) The Controller-General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 4 of the Trade and Merchandise Marks Act, 1958 shall be the Controller of Designs for the purposes of this Act.

43 of 1958.

(2) For the purposes of this Act, the Central Government may appoint as many examiners and other officers with such designations as it thinks fit.

(3) Subject to the provisions of this Act, the officers appointed under sub-section (2) shall discharge under the superintendence and directions of the Controller such functions of the Controller under this Act as he may, from time to time, by general or special order in writing, authorise them to discharge.

(4) Without prejudice to the generality of the provisions of sub-section (3), the Controller may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under sub-section (2) and deal with such matter himself either *de novo* or from the stage it was so withdrawn or transfer the same to another officer appointed under sub-section (2) who may, subject to special directions in the order of transfer, proceed with the matter either *de novo* or from the stage it was so transferred.

4. A design which—

- (a) is not new or original; or
- (b) has been disclosed to the public any where in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or
- (c) is not significantly distinguishable from known designs or combination of known designs; or
- (d) comprises or contains scandalous or obscene matter,

shall not be registered.

5. (1) The Controller may, on the application of any person claiming to be the proprietor of any new or original design not previously published in any country and which is not contrary to public order or morality, register the design under this Act:

Provided that the Controller shall before such registration refer the application for examination, by an examiner appointed under sub-section (2) of section 3, as to whether such design is capable of being registered under this Act and the rules made thereunder and consider the report of the examiner on such reference.

(2) Every application under sub-section (1) shall be in the prescribed form and shall be filed in the patent office in the prescribed manner and shall be accompanied by the prescribed fee.

(3) A design may be registered in not more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question.

(4) The Controller may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal to the High Court.

(5) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(6) A design when registered shall be registered as of the date of the application for registration.

6. (1) A design may be registered in respect of any or all of the articles comprised in a prescribed class of articles.

(2) Any question arising as to the class within which any article falls shall be determined by the Controller whose decision in the matter shall be final.

(3) Where a design has been registered in respect of any article comprised in a class of article, the application of the proprietor of the design to register it in respect of some one or more other articles comprised in that class of articles shall not be refused, nor shall the registration thereof be invalidated—

- (a) on the ground of the design not being a new or original design, by reason only that it was so previously registered; or

Prohibition of registration of certain designs.

Application for registration of designs.

Registration to be in respect of particular article.

(b) on the ground of the design having been previously published in India or in any other country, by reason only that it has been applied to article in respect of which it was previously registered:

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from previous registration.

(4) Where any person makes an application for the registration of a design in respect of any article and either—

(a) that design has been previously registered by another person in respect of some other article; or

(b) the design to which the application relates consists of a design previously registered by another person in respect of the same or some other article with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof,

then, if at any time while the application is pending the applicant becomes the registered proprietor of the design previously registered, the foregoing provisions of this section shall apply as if at the time of making the application, the applicant, had been the registered proprietor of that design.

Publication of  
particulars of  
registered  
designs.

Power of  
Controller to  
make orders  
regarding  
substitution of  
applicant,  
etc.

7. The Controller shall, as soon as may be after the registration of a design, cause publication of the prescribed particulars of the design to be published in such manner as may be prescribed and thereafter the design shall be open to public inspection.

8. (1) If the Controller is satisfied on a claim made in the prescribed manner at any time before a design has been registered that by virtue of any assignment or agreement in writing made by the applicant or one of the applicants for registration of the design or by operation of law, the claimant would, if the design were then registered, be entitled thereto or to the interest of the applicant therein, or to an undivided share of the design or of that interest, the Controller may, subject to the provisions of this section, direct that the application shall proceed in the name of the claimant or in the names of the claimants and the applicant or the other joint applicant or applicants, accordingly, as the case may require.

(2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for registration of a design except with the consent of the other joint applicant or applicants.

(3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the benefit of a design unless—

(a) the design is identified therein by reference to the number of the application for the registration; or

(b) there is produced to the Controller an acknowledgment by the person by whom the assignment or agreement was made that the assignment or agreement relates to the design in respect of which that application is made; or

(c) the rights of the claimant in respect of the design have been finally established by the decision of a court; or

(d) the Controller gives directions for enabling the application to proceed or for regulating the manner in which it should be proceeded with under sub-section (5).

(4) Where one of two or more joint applicants for registration of a design dies at any time before the design has been registered, the Controller may, upon a request in that behalf made by the survivor or survivors, and with the consent of the legal representative of the deceased, direct that the application shall proceed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for registration of a design whether or in what manner the application should be proceeded with, the Controller may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it should be proceeded with, or for both those purposes, as the case may require.

9. (1) The Controller shall grant a certificate of registration to the proprietor of the design when registered.

Certificate of registration.

(2) The Controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

10. (1) There shall be kept at the patent office a book called the register of designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matter as may be prescribed and such register may be maintained wholly or partly on computer floppies or diskettes, subject to such safeguards as may be prescribed.

Register of designs.

(2) Where the register is maintained wholly or partly on computer floppies or diskettes under sub-section (1), any reference in this Act to any entry in the register shall be construed as the reference to the entry so maintained on computer floppies or diskettes.

(3) The register of designs existing at the commencement of this Act shall be incorporated with and form part of the register of designs under this Act.

(4) The register of designs shall be *prima facie* evidence of any matter by this Act directed or authorized to be entered therein.

### CHAPTER III

#### COPYRIGHT IN REGISTERED DESIGNS

11. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during ten years from the date of registration.

Copyright on registration.

(2) If, before the expiration of the said ten years, application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of ten years.

12. (1) Where a design has ceased to have effect by reason of failure to pay the fee for the extension of copyright under sub-section (2) of section 11, the proprietor of such design or his legal representative and where the design was held by two or more persons jointly, then, with the leave of the Controller one or more of them without joining the others, may, within one year from the date on which the design ceased to have effect, make an application for the restoration of the design in the prescribed manner on payment of such fee as may be prescribed.

Restoration of lapsed designs.

(2) An application under this section shall contain a statement, verified in the prescribed manner, fully setting out the circumstances which led to the failure to pay the prescribed fee, and the Controller may require from the applicant such further evidence as he may think necessary.

13. (1) If, after hearing the applicant in cases where the applicant so desires or the Controller thinks fit, the Controller is satisfied that the failure to pay the fee for extension of the period of copyright was unintentional and that there has been no undue delay in the making of the application, the Controller shall upon payment of any unpaid fee for extension of the period of copyright together with prescribed additional fee restore the registration of design.

Procedure for disposal of applications for restoration of lapsed designs.



(2) The Controller may, if he thinks fit as a condition of restoring the design, require that any entry shall be made in the register of any document or matter which under the provisions of this Act, has to be entered in the register but which has not been so entered.

Rights of  
proprietor of  
lapsed design  
which have  
been restored.

14. (1) Where the registration of a design is restored, the rights of the registered proprietor shall be subject to such provisions as may be prescribed and to such other provisions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by contract or otherwise to avail themselves of, the benefit of applying the design between the date when the registration of the design ceased to have effect and the date of restoration of the registration of the design.

(2) No suit or other proceeding shall be commenced in respect of piracy of a registered design or infringement of the copyright in such design committed between the date on which the registration of the design ceased to have effect and the date of the restoration of the design.

Requirements  
before  
delivery on  
sales.

15. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

(a) (if exact representations or specimens were not furnished on the application for registration) furnish to the Controller the prescribed number of exact representations or specimens of the design; and, if he fails to do so, the Controller may, after giving notice thereof to the proprietor, erase his name from the register and thereupon the copyright in the design shall cease; and

(b) cause each such article to be marked with the prescribed mark, or with the prescribed words or figures denoting that the design is registered; and, if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the Central Government by or on behalf of any trade or industry that in the interest of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Central Government may, if it thinks fit, by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as it thinks fit.

Effect of  
disclosure on  
copyright.

16. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person, other than the proprietor of the design, and the acceptance of a first and confidential order for articles bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Inspection of  
registered  
designs.

17. (1) During the existence of copyright in a design, any person on furnishing such information as may enable the Controller to identify the design and on payment of the prescribed fee may inspect the design in the prescribed manner.

(2) Any person may, on an application to the Controller and on payment of such fee as may be prescribed, obtain a certified copy of any registered design.

Information as  
to existence of  
copyright.

18. On the request of any person furnishing such information as may enable the Controller to identify the design, and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of articles, and shall state the date of registration, and the name and address of the registered proprietor.

19. (1) Any person interested may present a petition for the cancellation of the registration of a design at any time after the registration of the design, to the Controller on any of the following grounds, namely:—

Cancellation  
of registration.

(a) that the design has been previously registered in India; or

(b) that it has been published in India or in any other country prior to the date of registration; or

(c) that the design is not a new or original design; or

(d) that the design is not registrable under this Act; or

(e) that it is not a design as defined under clause (d) of section 2.

(2) An appeal shall lie from any order of the Controller under this section to the High Court, and the Controller may at any time refer any such petition to the High Court, and the High Court shall decide any petition so referred.

39 of 1970.

20. A registered design shall have to all intents the like effect as against the Government as it has against any person and the provisions of Chapter XVII of the Patents Act, 1970 shall apply to registered designs as they apply to patents.

Designs to  
bind  
Government.

#### CHAPTER IV

##### INDUSTRIAL AND INTERNATIONAL EXHIBITIONS

21. The exhibition of a design, or of any article to which a design is applied, at an industrial or other exhibition to which the provisions of this section have been extended by the Central Government by notification in the Official Gazette, or the publication of a description of the design, during or after the period of the holding of the exhibition, or the exhibition of the design or the article or the publication of a description of the design by any person elsewhere during or after the period of the holding of the exhibition, without the privity or consent of the proprietor, shall not prevent the design from being registered or invalidate the registration thereof:

Provisions as  
to exhibitions.

Provided that—

(a) the exhibitor exhibiting the design or article, or publishing a description of the design, gives to the Controller previous notice in the prescribed form; and

(b) the application for registration is made within six months from the date of first exhibiting the design or article or publishing a description of the design.

#### CHAPTER V

##### LEGAL PROCEEDINGS

22. (1) During the existence of copyright in any design it shall not be lawful for any person—

Piracy of  
registered  
design.

(a) for the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(b) to import for the purposes of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof; or

(c) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of articles in which the design is registered

without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section, he shall be liable for every contravention—

(a) to pay to the registered proprietor of the design a sum not exceeding twenty-five thousand rupees recoverable as a contract debt, or

(b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed fifty thousand rupees:

Provided further that no suit or any other proceeding for relief under this sub-section shall be instituted in any court below the court of District Judge.

(3) In any suit or any other proceeding for relief under sub-section (2), every ground on which the registration of a design may be cancelled under section 19 shall be available as a ground of defence.

(4) Notwithstanding anything contained in the second proviso to sub-section (2), where any ground on which the registration of a design may be cancelled under section 19 has been availed of as a ground of defence and sub-section (3) in any suit or other proceeding for relief under sub-section (2), the suit or such other proceeding shall be transferred by the court, in which the suit or such other proceeding is pending, to the High Court for decision.

(5) When the court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs.

Application of certain provisions of the Act as to patents to designs.

23. The provisions of the Patents Act, 1970 with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for reference to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

39 of 1970.

## CHAPTER VI

### GENERAL

#### Fees

Fees.

24. (1) There shall be paid in respect of the registration of designs and applications therefor and in respect of other matters relating to designs under this Act such fees as may be prescribed.

(2) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid.

#### *Provisions as to registers and other documents in the patent office*

Notice of trust not to be entered in registers.

25. There shall not be entered in any register kept under this Act, or be receivable by the Controller, any notice of any trust expressed, implied or constructive.

Inspection of and extracts from registers.

26. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act; and certified copies, sealed with the seal of the patent office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee:

Provided that where such register is maintained wholly or partly on computer, the inspection of such register under this section shall be made by inspecting the computer print out of the relevant entry in the register so maintained on computer.

27. Reports of or to the Controller made under this Act other than the report referred to in section 45 shall not in any case be published or be open to public inspection.

Privilege of reports of Controller.

28. Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Controller.

Prohibition and publication of specification, drawings, etc., where application abandoned, etc.

29. The Controller may, on request in writing accompanied by the prescribed fee, correct any clerical error in the representation of a design or in the name or address of the proprietor of any design, or in any other matter, which is entered upon the register of designs.

Power of Controller to correct clerical errors.

30. (1) Where a person becomes entitled by assignments, transmission or other operation of law to the copyright in a registered design, he may make an application in the prescribed form to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such design, and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title.

Entry of assignment and transmissions in registers.

(2) Where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a registered design, he may make an application in the prescribed form to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of designs, with particulars of the instrument, if any, creating such interest.

(3) For the purposes of sub-section (1) or sub-section (2), an assignment of a design or of a share in a design, a mortgage, licence or the creation of any other interest in a design shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of an instrument embodying all the terms and conditions governing their rights and obligation and the application for registration of title under such instrument is filed in the prescribed manner with the Controller within six months from the execution of the instrument or within such further period not exceeding six months in the aggregate as the Controller on the application made in the prescribed manner allows:

Provided that the instrument shall, on entry of its particulars in the register under sub-section (1) or sub-section (2), have the effect from the date of its execution.

(4) The person registered as the proprietor of a design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the design and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the design may be enforced in like manner as in respect of any other movable property.



(5) Except in the case of an application made under section 31, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-sections (1) and (2) shall not be admitted in evidence in any court in proof of the title to copyright in a design or to any interest therein, unless the court, for reasons to be recorded in writing, otherwise directs.

Rectification  
of register.

31. (1) The Controller may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of designs of any entry, or by any entry made in such register without sufficient cause, or by any entry wrongly remaining on such register, or by an error or defect in any entry in such register, make such order for making, expunging or varying such entry as he thinks fit and rectify the register accordingly.

(2) The Controller may, in any proceeding under this section, decide any question that may be necessary or expedient to decide in connection with the rectification of a register.

(3) An appeal shall lie to the High Court from any order of the Controller under this section and the Controller may refer any application under this section to the High Court for decision, and the High Court shall dispose of any application so referred.

(4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner who shall upon the receipt of such notice rectify the register accordingly.

(5) Nothing in this section shall be deemed to empower the Controller to make any such order cancelling the registration of a design as is provided for in section 19.

## CHAPTER VII

### POWERS AND DUTIES OF CONTROLLER

Powers of  
Controller in  
proceedings  
under Act.

32. Subject to any rules made in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a civil court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents, issuing commissions for the examining of witnesses and awarding costs and such award shall be executable in any court having jurisdiction as if it were a decree of that court.

Exercise of  
discretionary  
power by  
Controller.

33. Where any discretionary power is by or under this Act given to the Controller, he shall not exercise that power adversely to the applicant for registration of a design without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Power of  
Controller to  
take directions  
of the Central  
Government.

34. The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Central Government for directions in the matter.

Refusal to  
register a  
design in  
certain cases.

35. (1) The Controller may refuse to register a design of which the use would, in his opinion, be contrary to public order or morality.

(2) An appeal shall lie to the High Court from an order of the Controller under this section.

Appeals to the  
High Court.

36. (1) Where an appeal is declared by this Act to lie from the Controller to the High Court, the appeal shall be made within three months of the date of the order passed by the Controller.

(2) In calculating the said period of three months, the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(3) The High Court may, if it thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the High Court shall be final.

(4) The High Court may make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it.

## CHAPTER VIII

### EVIDENCE, ETC.

37. Subject to any rules made under section 44, in any proceeding under this Act before the Controller, the evidence shall be given by affidavit in the absence of directions by the Controller to the contrary; but in any case in which the Controller thinks it right so to do he may take evidence *viva voce* in lieu of or in addition to evidence by affidavit or may allow any party to be cross-examined on the contents of his affidavit.

Evidence  
before the  
Controller.

38. A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorized by this Act, or any rules made thereunder to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Certificate of  
Controller to  
be evidence.

39. Printed or written copies or extracts, purporting to be certified by the Controller and sealed with the seal of the patent office, of documents in the patent office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in India, and in all proceedings, without further proof or production of the originals:

Evidence of  
documents in  
patent office.

Provided that a court may, if it has reason to doubt the accuracy or authenticity of the copies tendered in evidence, require the production of the originals or such further proof as it considers necessary.

40. Any application, notice or other document authorized or required to be left, made or given at the patent office or to the Controller, or to any other person under this Act, may be sent by post.

Applicat<sup>n</sup> -  
and notices by  
post.

41. (1) If any person, is by reason of infancy, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or, if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

Declaration by  
infant, lunatic,  
etc.

(2) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

42. (1) It shall not be lawful to insert—

(i) in any contract for or in relation to the sale or lease of an article in respect of which a design is registered; or

(ii) in a licence to manufacture or use an article in respect of which a design is registered; or

(iii) in a licence to package the article in respect of which a design is registered,

condition the effect of which may be—

Avoidance of  
certain  
restrictive  
conditions.

(a) to require the purchaser, lessee, or licensee to acquire from the vendor, lessor, or licensor or his nominees, or to prohibit him from acquiring or to restrict in any manner or to any extent his right to acquire from any person or to prohibit him

from acquiring except from the vendor, lessor, or licensor or his nominees any article other than the article in respect of which a design is registered; or

(b) to prohibit the purchaser, lessee or licensee from using or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee, to use an article other than the article in respect of which a design is registered which is not supplied by the vendor, lessor or licensor or his nominee,

and any such condition shall be void.

(2) A condition of the nature referred to in clause (a) or clause (b) of sub-section (1) shall not cease to be a condition falling within that sub-section merely by reason of the fact that the agreement containing it has been entered into separately, whether before or after the contract relating to the sale, lease or licence of the article in respect of which a design is registered.

(3) In proceeding against any person for any act in contravention of section 22, it shall be a defence to prove that at the time of such contravention there was in force a contract relating to the registered design and containing a condition declared unlawful by this section:

Provided that this sub-section shall not apply if the plaintiff is not a party to the contract and proves to the satisfaction of the court that the restrictive condition was inserted in the contract without his knowledge and consent, express or implied.

(4) Nothing in this section shall—

(a) affect a condition in a contract by which a person is prohibited from selling goods other than those of a particular person;

(b) validate a contract which, but for this section, would be invalid;

(c) affect a condition in a contract for the lease of, or licence to use, an article in respect of which a design is registered, by which the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the article, in respect of which a design is registered, as may be required or to put or keep it in repair.

(5) The provision of this section shall also apply to contracts made before the commencement of this Act if, and in so far as, any restrictive conditions declared unlawful by this section continue in force after the expiration of one year from such commencement.

## CHAPTER IX

### AGENCY

Agency.

43. (1) All applications and communications to the Controller under this Act may be signed by, and all attendances upon the Controller may be made by or through a legal practitioner or by or through an agent whose name and address had been entered in the register of patent agents maintained under section 125 of the Patents Act, 1970.

39 of 1970.

(2) The Controller may, if he sees fit, require—

(a) any such agent to be resident in India;

(b) any person not residing in India to employ an agent residing in India;

(c) the personal signature or presence of any applicant or other person.

## CHAPTER X

## POWERS, ETC., OF CENTRAL GOVERNMENT

44. (1) Any person who has applied for protection for any design in the United Kingdom or any of other convention countries or group of countries or countries which are members of inter-governmental organisations, or his legal representative or assignee shall, either alone or jointly with any other person, be entitled to claim that the registration of the said design under this Act shall be in priority to other applicants and shall have the same date as the date of the application in the United Kingdom or any of such other convention countries or group of countries or countries which are members of inter-governmental organisations, as the case may be:

Reciprocal arrangement with the United Kingdom and other convention countries or group of countries or inter-governmental organisations.

Provided that—

(a) the application is made within six months from the application for protection in the United Kingdom or any such other convention countries or group of countries or countries which are members of inter-governmental organisations, as the case may be; and

(b) nothing in this section shall entitle the proprietor of the design to recover damages for piracy of design happening prior to the actual date on which the design is registered in India.

(2) The registration of a design shall not be invalidated by reason only of the exhibition or use of or the publication of a description or representation of the design in India during the period specified in this section as that within which the application may be made.

(3) The application for registration of a design under this section has been made in the same manner as an ordinary application under this Act.

(4) Where it is made to appear to the Central Government that the legislature of the United Kingdom or any such other convention country or a country which is member of any group of countries or inter-governmental organisation as may be notified by the Central Government in this behalf has made satisfactory provision for the protection of designs registered in India, the Central Government may, by notification in the Official Gazette, direct that the provisions of this section, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of designs registered in the United Kingdom or that other convention country or such country which is member of any group of countries or inter-governmental organisation, as the case may be.

*Explanation 1.*—For the purposes of this section, the expression “convention countries”, “group of countries” or “inter-governmental organisation” means, respectively, such countries, group of countries or inter-governmental organisation to which the Paris Convention for Protection of Industrial Property, 1883 as revised at Stockholm in 1967 and as amended in 1979 or the Final Act, embodying the results of the Uruguay Round of Multilateral Trade Negotiations, provided for the establishment of World Trade Organisation applies.

*Explanation 2.*—Where more than one application for protection referred to in sub-section (1) has been made for similar protections in the United Kingdom or one or more convention countries, group of countries or countries which are members of inter-governmental organisations, the period of six months referred to in clause (a) of that sub-section shall be reckoned from the date of which the earlier or the earliest application, as the case may be, of such applications has been made.

45. The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution of this Act by or under the Controller.

Report of the Controller to be placed before Parliament.



Protection of  
security of  
India.

46. Notwithstanding anything contained in this Act, the Controller shall—

(a) not disclose any information relating to the registration of a design or any application relating to the registration of a design under this Act, which he considers prejudicial to the interest of the security of India; and

(b) take any action regarding the cancellation of registration of such designs registered under this Act which the Central Government may, by notification in the Official Gazette, specify in the interest of the security of India.

*Explanation.*—For the purposes of this section, the expression “security of India” means any action necessary for the security of India which relates to the application of any design registered under this Act to any article used for war or applied directly or indirectly for the purposes of military establishment or for the purposes of war or other emergency in international relations.

Power of  
Central  
Government to  
make rules.

47. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form of application for registration of design, the manner of filing it at the patent office and the fee which shall accompany it, under sub-section (2) of section 5;

(b) the time within which the registration is to be effected under sub-section (5) of section 5;

(c) the classification of articles for registration under sub-section (1) of section 6;

(d) the particulars of design to be published and the manner of their publication under section 7;

(e) the manner of making claim under sub-section (1) of section 8;

(f) the manner of making applications to the Controller under sub-section (5) of section 8;

(g) the additional matters required to be entered in the register of designs and the safeguards to be made in maintaining such register in computer floppies or diskettes under sub-section (1) of section 10;

(h) the manner of making application and fee to be paid for extension of the period of copyright under and the fee payable thereto, sub-section (2) of section 11;

(i) the manner of making application for restoration of design and the fee to be paid with it under sub-section (1) of section 12;

(j) the manner of verification of statement contained in an application under sub-section (2) of section 12;

(k) the additional fee to be paid for restoration of the registration of design under sub-section (1) of section 13;

(l) the provisions subject to which the right of the registered proprietor shall be under sub-section (1) of section 14.

(m) the number of exact representation or specimen of the design to be furnished to the Controller under clause (a) of sub-section (1) of section 15;

(n) the mark, words or figures with which the article is to be marked denoting that the design is registered under clause (b) of sub-section (1) of section 15;

(o) the rules to dispense with or modify as regards any class or description of articles and any of the requirements of section 15 as to marking under sub-section (2) of that section;

(p) the fee to be paid for and the manner of inspection under sub-section (1) of section 17;

(q) the fee to be paid to obtain a certified copy of any design under sub-section (2) of section 17;

(r) the fee on payment of which the Controller shall inform under section 18;

(s) the form for giving notice to the controller under clause (a) of the proviso to section 21;

(t) the fee to be paid in respect of the registration of designs and application therefor, and in respect of other matters relating to designs under sub-section (1) of section 24;

(u) the fee to be paid for giving certified copy of any entry in the register under section 26;

(v) the fee to be accompanied with the requests in writing for correcting any clerical error under section 29;

(w) the form in which an application for registration as proprietor shall be made and the manner in which the Controller shall cause an entry to be made in the register of the assignment, transmission or other instrument effecting the title under sub-section (1) of section 30;

(x) the form in which an application for title shall be made and the manner in which the Controller shall cause notice of the interest to be entered in the register of designs with particulars of the instrument, if any, creating such interest under sub-section (2) of section 30;

(y) the manner of filing an application for registration and for making application for extension of time as referred to in sub-section (3) of section 30;

(z) the manner of making application to the Controller for rectification of register under sub-section (1) of section 31;

(za) the manner in which the notice of rectification shall be served on the Controller under sub-section (4) of section 31;

(zb) the rules regulating the proceedings before the Controller under section 32;

(zc) the time which shall be granted to the applicants for being heard by the Controller under section 33;

(zd) the fee to be accompanied with an appeal under sub-section (1) of section 36;

(ze) any other matter which is required to be, or may be, prescribed.

(3) The power to make rules under this section shall be subject to the conditions of the rules being made after previous publication.

(4) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses

agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Act.

## CHAPTER XI

## REPEAL AND SAVING

Repeal and  
savings.

48. (1) The Designs Act, 1911 is hereby repealed.

2 of 1911.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897 with respect to repeals, any notification, rule, order, requirement, registration, certificate, notice, decision, determination, direction, approval, authorisation, consent, application, request or thing made, issued, given or done under the Designs Act, 1911, shall, in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.

10 of 1897.

2 of 1911.

(3) The provisions of this Act shall apply to all applications for registration of designs pending at the commencement of this Act and to any proceedings consequent thereon and to any registration granted in pursuance thereof.

(4) Notwithstanding anything contained in this Act, any proceeding pending in any court at the commencement of this Act may be continued in that court as if this Act has not been passed.

(5) Notwithstanding anything contained in sub-section (2), the date of expiration of the copyright in the designs registered before the commencement of this Act shall, subject to the provisions of this Act, be the date immediately after the period of five years for which it was registered or the date immediately after the period of five years for which the extension of the period of copyright for a second period from the expiration of the original period has been made.

Sd/-

SUBHASH C. JAIN,  
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.



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## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/70/2000/Act-17/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 8th June, 2000/Jyaisitha 18, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 7th June, 2000, and is hereby published for general information:—

#### THE SALARY, ALLOWANCES AND PENSION OF MEMBERS OF PARLIAMENT (AMENDMENT) ACT, 2000

(Act No. 17 of 2000)

(7th June, 2000.)

An Act further to amend the Salary, Allowances and Pension of Members of Parliament Act, 1954.

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2000:

Short title and commencement.

(2) Save as otherwise provided in this Act, it shall come into force at once.

30 of 1954.

2. In the Salary, Allowances and Pension of Members of Parliament Act, 1954 (hereinafter referred to as the principal Act), in section 4,—

Amendment of section 4.

(a) in sub-section (1), in clause (c), in sub-clause (ii), for the first proviso, the following proviso shall be substituted, namely:—

“Provided that where the spouse of a member, if any, performs such journey or part thereof by road twice in a budget session of Parliament and once during every other session of Parliament unaccompanied by such member in respect of which such spouse has been allowed to travel by rail or air or partly



by air and partly by rail from the usual place of residence of the member to Delhi and back under sub-section (2) of section 6B, the road mileage prescribed under this sub-clause shall be allowed to such member for such journey or part thereof.”;

(b) in sub-section (2), the following provisos shall be inserted at the end, namely:—

“Provided that the total amount of travelling allowance drawn by such member for the entire journey shall not exceed the amount which would have been admissible to him had he performed such journey by rail or by steamer, as the case may be:

Provided further that the first proviso shall be applicable to such journey only where the places of the journey are connected by express, mail or superfast train.”.

Amendment of  
section 6B.

3. In section 6B of the principal Act,—

(a) section 6B shall be renumbered as sub-section (1) thereof, and in sub-section (1) as so renumbered, after clause (ii), the following proviso shall be inserted, namely:—

“Provided that where a member has no spouse, such member may be accompanied by any person in place of the spouse, and notwithstanding anything contained in clause (i), the person so accompanying shall be entitled to every facility available to the spouse.”;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(2) Notwithstanding anything contained in clause (ii) of sub-section (1), the spouse of a member shall be entitled to travel by railway in first class air-conditioned or executive class in any train or by air or partly by rail and partly by air from the usual place of the residence of the member to Delhi and back once during every session and twice in budget session of Parliament subject to the condition that total number of each such journey either to Delhi or back shall not exceed eight in a year:

Provided that where any such journey or part thereof is performed by air from any place other than usual place of residence of the member to Delhi and back, then, such spouse shall be entitled to an amount equal to the fare by air for such journey or part thereof, as the case may be, or to the amount equal to the journey performed by air from the usual place of residence of the member to Delhi and back, whichever is less.”.

Substitution of  
new section for  
section 6D.

4. For section 6D of the principal Act, the following section shall be substituted, namely:—

Special facilities  
to blind and  
physically inca-  
pacitated Mem-  
bers.

“6D. A member who is blind or who is, in the opinion of the Chairman of the Council of States or, as the case may be, the Speaker of the House of the People, so incapacitated physically as to require the facility of an attendant shall, with respect to each such journey—

(i) by air as is referred to in clause (b) of sub-section (1) of section 4 or clause (b) of sub-section (1) or sub-section (2) of section 5 or section 6C which he performs along with an attendant be entitled (in addition to the allowances which he is entitled under section 4 or section 5 or, as the case may be, section 6C) to an amount equal to one fare by air for such journey;

(ii) by rail as is referred to in section 4, section 5, section 6 or section 6B be allowed the facility of one free railway pass for an attendant, to attend such member, in the same class in which such member travels in lieu of one free air-

conditioned two-tier class railway pass under clause (i) of sub-section (1) of section 6B.

5. In section 8 of the principal Act, the following provisos shall be inserted and shall be deemed to have been inserted at the end with effect from the 26th day of April, 1999, namely:—

Amendment of section 8.

“Provided that where the House of the People is sooner dissolved before completing five years from the date appointed for its first meeting, the member of such House may be allowed without payment, to such extent of the quota of free telephone calls or free units of electricity or free units in kilolitres of water, available to him for a year in which such dissolution of such House takes place, as remains unutilised on the date of such dissolution, to avail during the period commencing on and from the date of such dissolution and ending on the date immediately preceding the date on which the notification under section 73 of the Representation of the People Act, 1951 has been issued for the constitution of subsequent House of the People subject to the condition that such Member shall be liable to pay for any telephone calls, in excess of the calls so allowed to be made during such period on the telephone provided to him by the Government for such purpose, and units of electricity or kilolitres of water consumed in excess of the free electricity or kilolitres of water allowed:

43 of 1951.

Provided further that where the member referred to in the first proviso becomes Member of the subsequent House of the People as referred to be constituted in that proviso, then, he shall be entitled for the adjustment of the excess telephone calls, units of electricity, kilolitres of water for the payment of which he is liable under the first proviso against the quota of free telephone calls, units of electricity and kilolitres of water for which he is entitled during the first year of the duration of such subsequent House of the People.”

Sd/—

SUBHASH C. JAIN,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.



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Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/71/2000/Act-18/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 8th June, 2000/Jyaistha 18, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 7th June, 2000, and is hereby published for general information:—

#### THE LEADERS AND CHIEF WHIPS OF RECOGNISED PARTIES AND GROUPS IN PARLIAMENT (FACILITIES) AMENDMENT ACT, 2000

(Act No. 18 of 2000)

(7th June, 2000.)

An Act to amend the Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998.

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Amendment Act, 2000.

Short title and commencement.

(2) Save as otherwise provided in this Act, it shall come into force at once.

5 of 1999.

2. In the Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998 (hereinafter referred to as the principal Act), in section 1, for sub-section (2), the following sub-section shall be substituted and shall be deemed to have been substituted on and from the 5th day of February, 1999, namely:—

Amendment of section 1.

“(2) It shall be deemed to have come into force on the 5th day of February, 1999.”

3. For section 2 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 2.

## Definitions.

"2. In this Act, unless the context otherwise requires,—

(a) "recognised group" means,—

(i) in relation to the Council of States, every party which has a strength of not less than fifteen members and not more than twenty-four members in the Council;

(ii) in relation to the House of the People, every party which has a strength of not less than thirty members and not more than fifty-four members in the House;

(b) "recognised party" means,—

(i) in relation to the Council of States, every party which has a strength of not less than twenty-five members in the Council;

(ii) in relation to the House of the People, every party which has a strength of not less than fifty-five members in the House."

Substitution of  
new section for  
section 3.

Facilities to  
the Leaders  
and Chief  
Whips of  
recognised  
groups and  
parties.

4. For section 3 of the principal Act, the following section shall be substituted, namely :—

"3. Subject to any rules made in this behalf by the Central Government, each leader, deputy leader and each Chief Whip of a recognised group and a recognised party shall be entitled to telephone and secretarial facilities:

Provided that such facilities shall not be provided to such leader, deputy leader or Chief Whip, as the case may be, who—

(i) holds an office of Minister as defined in section 2 of the Salaries and Allowances of Ministers Act, 1952;

(ii) holds an office of the Leader of the Opposition as defined in section 2 of the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977; or

(iii) is entitled to similar telephone and secretarial facilities by virtue of holding any office of, or representation in, a Parliamentary Committee or other Committee, Council, Board, Commission or other body set up by the Government; or

(iv) is entitled to similar telephone and secretarial facilities provided to him in any other capacity by the Government or a local authority or Corporation owned or controlled by the Government or any local authority."

58 of 1952.

33 of 1977.

Amendment of  
section 3  
of Act  
10 of 1959.

5. In the Parliament (Prevention of Disqualification) Act, 1959, in section 3, in clause (ac), for the words "each leader", the words "each leader and each deputy leader" shall be substituted.

Validation of  
rules and  
certain actions.

6. The Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Telephone and Secretarial Facilities) Rules, 1999 published in the Gazette of India, Extraordinary, dated the 5th February, 1999 with the notification of the Government of India in the Ministry of Parliamentary Affairs No. G.S.R. 66(E), dated the 4th February, 1999 (hereinafter referred to as the said Rules) shall be deemed to have and to have always had effect on and from the 5th day of February, 1999 as if the amendments made by section 2 had been in force at all material times and accordingly any action taken or anything done or purported to have been taken or done under the said Rules during the period commencing on and from the 5th day of February, 1999 and ending with the day on which the Leaders



and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Amendment Act, 2000 receives the assent of the President shall be deemed to be, and to always have been, for all purposes, as validly and effectively taken or done as if the said Rules had been in force at all material times.

Sd/-

SUBHASH C. JAIN,  
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

V. M. KOTIARE,  
Secretary to Government.

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GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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##### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/72/2000/Act-19/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 9th June, 2000/Jyaistha 19, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 9th June, 2000, and is hereby published for general information:—

#### THE COTTON TEXTILES CESS (REPEAL) ACT, 2000

(ACT No. 19 OF 2000)

(9th June, 2000.)

*An Act to repeal the Cotton Textiles Cess Act, 1948.*

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Cotton Textiles Cess (Repeal) Act, 2000.
2. The Cotton Textiles Cess Act, 1948 is hereby repealed.

Short title.

Repeal of Act  
7 of 1948.

Sd/—

SUBHASH C. JAIN,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.

VI-Ex. 36-1

36-1

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Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/73/2000/Act-20/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 9th June, 2000/Jyaishta 19, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 9th June, 2000, and is hereby published for general information:—

### THE DIRECT-TAX LAWS (MISCELLANEOUS) REPEAL ACT, 2000

(ACT No. 20 OF 2000)

(9th June, 2000.)

#### *An Act to repeal certain enactments relating to direct taxes.*

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Direct-tax Laws (Miscellaneous) Repeal Act, 2000.

Short title.

2. The enactments specified in the Schedule are hereby repealed.

Repeal of  
certain  
enactments.

VI-Ex. 37-1

## Savings.

## 3. (1) The repeal by this Act of any enactment shall not—

(a) affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

(b) affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, immunity, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

(c) affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed;

(d) revive or restore any jurisdiction, office, custom, liability, right, title, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

(2) The mention of particular matters in sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals. 10 of 1897.



## THE SCHEDULE

(See section 2)

## REPEALS

Year	Number	Short title
1926	3	The Government Trading Taxation Act, 1926.
1940	XV	The Excess Profits Tax Act, 1940.
1947	XXI	The Business Profits Tax Act, 1947.
1947	XXX	The Taxation on Income (Investigation Commission) Act, 1947.
1949	22	The Payment of Taxes (Transfer of Property) Act, 1949.
1949	67	The Taxation Laws (Extension to Merged States and Amendment) Act, 1949.
1953	34	The Estate Duty Act, 1953.
1954	38	The Madhya Bharat Taxes on Income (Validation) Act, 1954.
1962	9	The Estate Duty (Distribution) Act, 1962.
1965	1	The Income-tax (Amendment) Act, 1965.
1971	37	The Central Board of Direct Taxes (Validation of Proceedings) Act, 1971.
1971	62	The Companies (Surcharge on Income-tax) Act, 1971.
1976	8	The Voluntary Disclosure of Income and Wealth Act, 1976.
1981	7	The Special Bearer Bonds (Immunities and Exemptions) Act, 1981.
1991	47	The Voluntary Deposits (Immunities and Exemptions) Act, 1991.
1942	LX	The Income-tax and Excess Profits Tax (Emergency) Ordinance, 1942.
1943	IV	The Income-tax Proceedings Validity Ordinance, 1943.
1943	XVI	The Excess Profits Tax Ordinance, 1943.

Sd/-

SUBHASH C. JAIN,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.



सत्यमेव जयते

# The Gujarat Government Gazette

## EXTRAORDINARY

PUBLISHED BY AUTHORITY

VOL. XLI]

WEDNESDAY, DECEMBER 27, 2000 / PAUSA 6, 1922

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

### PART - VI

#### Acts of Parliament and Ordinances Promulgated by the President

##### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/74/2000/Act-21/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 9th June, 2000/Jyaishta 19, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 9th June, 2000, and is hereby published for general information:—

#### THE INFORMATION TECHNOLOGY ACT, 2000

(Act No. 21 of 2000)

(9th June, 2000.)

An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

WHEREAS the General Assembly of the United Nations by resolution A/RES/51/162, dated the 30th January, 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law;

AND WHEREAS the said resolution recommends *inter alia* that all States give favourable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information;

AND WHEREAS it is considered necessary to give effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic records.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

#### CHAPTER I

##### PRELIMINARY

1. (1) This Act may be called the Information Technology Act, 2000.

(2) It shall extend to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

Short title,  
extent,  
commence-  
ment and  
application.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

(4) Nothing in this Act shall apply to,—

(a) a negotiable instrument as defined in section 13 of the Negotiable Instruments Act, 1881;

26 of 1881.

(b) a power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882;

7 of 1882.

(c) a trust as defined in section 3 of the Indian Trusts Act, 1882;

2 of 1882.

(d) a will as defined in clause (h) of section 2 of the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called;

39 of 1925.

(e) any contract for the sale or conveyance of immovable property or any interest in such property;

(f) any such class of documents or transactions as may be notified by the Central Government in the Official Gazette.

#### Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "access" with its grammatical variations and cognate expressions means gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network;

(b) "addressee" means a person who is intended by the originator to receive the electronic record but does not include any intermediary;

(c) "adjudicating officer" means an adjudicating officer appointed under sub-section (1) of section 46;

(d) "affixing digital signature" with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of digital signature;

(e) "appropriate Government" means as respects any matter,—

(i) enumerated in List II of the Seventh Schedule to the Constitution;

(ii) relating to any State law enacted under List III of the Seventh Schedule to the Constitution,

the State Government and in any other case, the Central Government;

(f) "asymmetric crypto system" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature;

(g) "Certifying Authority" means a person who has been granted a licence to issue a Digital Signature Certificate under section 24;

(h) "certification practice statement" means a statement issued by a Certifying Authority to specify the practices that the Certifying Authority employs in issuing Digital Signature Certificates;

(i) "computer" means any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;

(j) "computer network" means the interconnection of one or more computers through—

(i) the use of satellite, microwave, terrestrial line or other communication media; and

(ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

(k) "computer resource" means computer, computer system, computer network, data, computer data base or software;

(l) "computer system" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

(m) "Controller" means the Controller of Certifying Authorities appointed under sub-section (1) of section 17;

(n) "Cyber Appellate Tribunal" means the Cyber Regulations Appellate Tribunal established under sub-section (1) of section 48;

(o) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

(p) "digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;

(q) "Digital Signature Certificate" means a Digital Signature Certificate issued under sub-section (4) of section 35;

(r) "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

(s) "Electronic Gazette" means the Official Gazette published in the electronic form;

(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

(u) "function", in relation to a computer, includes logic, control, arithmetical process, deletion, storage and retrieval and communication or telecommunication from or within a computer;

(v) "information" includes data, text, images, sound, voice, codes, computer programmes, software and data bases or micro film or computer generated micro fiche;

(w) "intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message;

(x) "key pair", in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key;



(y) "law" includes any Act of Parliament or of a State Legislature, Ordinances promulgated by the President or a Governor, as the case may be, Regulations made by the President under article 240, Bills enacted as President's Act under sub-clause (a) of clause (1) of article 357 of the Constitution and includes rules, regulations, bye-laws and orders issued or made thereunder;

(z) "licence" means a licence granted to a Certifying Authority under section 24;

(za) "originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;

(zb) "prescribed" means prescribed by rules made under this Act;

(zc) "private key" means the key of a key pair used to create a digital signature;

(zd) "public key" means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate;

(ze) "secure system" means computer hardware, software, and procedure that—

- (a) are reasonably secure from unauthorised access and misuse;
- (b) provide a reasonable level of reliability and correct operation;
- (c) are reasonably suited to performing the intended functions; and
- (d) adhere to generally accepted security procedures;

(zf) "security procedure" means the security procedure prescribed under section 16 by the Central Government;

(zg) "subscriber" means a person in whose name the Digital Signature Certificate is issued;

(zh) "verify" in relation to a digital signature, electronic record or public key, with its grammatical variations and cognate expressions means to determine whether—

- (a) the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber;
- (b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

## CHAPTER II

### DIGITAL SIGNATURE

Authentication  
of electronic  
records.

3. (1) Subject to the provisions of this section any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

*Explanation.*—For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller,

set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible—

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

### CHAPTER III

#### ELECTRONIC GOVERNANCE

4. Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is—

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Legal  
recognition of  
electronic  
records.

5. Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

Legal  
recognition of  
digital  
signatures.

*Explanation.*—For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

6. (1) Where any law provides for—

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

Use of  
electronic  
records and  
digital  
signatures in  
Government  
and its  
agencies.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe—

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Retention of  
electronic  
records.

7. (1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if—

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of despatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be despatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Publication of  
rule, regula-  
tion, etc., in  
Electronic  
Gazette.

8. Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette:

Provided that where any rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form.

Sections 6, 7  
and 8 not to  
confer right to  
insist document  
should be  
accepted in  
electronic form.

9. Nothing contained in sections 6, 7 and 8 shall confer a right upon any person to insist that any Ministry or Department of the Central Government or the State Government or any authority or body established by or under any law or controlled or funded by the Central or State Government should accept, issue, create, retain and preserve any document in the form of electronic records or effect any monetary transaction in the electronic form.

Power to make  
rules by Central  
Government  
in respect of  
digital signature.

10. The Central Government may, for the purposes of this Act, by rules, prescribe—

- (a) the type of digital signature;
- (b) the manner and format in which the digital signature shall be affixed;
- (c) the manner or procedure which facilitates identification of the person affixing the digital signature;
- (d) control processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payments; and
- (e) any other matter which is necessary to give legal effect to digital signatures.

#### CHAPTER IV

##### ATTRIBUTION, ACKNOWLEDGMENT AND DESPATCH OF ELECTRONIC RECORDS

Attribution of  
electronic  
records.

11. An electronic record shall be attributed to the originator—

- (a) if it was sent by the originator himself;
- (b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or
- (c) by an information system programmed by or on behalf of the originator to operate automatically.

12. (1) Where the originator has not agreed with the addressee that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by—

Acknowledgment of receipt.

(a) any communication by the addressee, automated or otherwise; or

(b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.

(2) Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then unless acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator.

(3) Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

13. (1) Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

Time and place of despatch and receipt of electronic record.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:—

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,—

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,—

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.



## CHAPTER V

## SECURE ELECTRONIC RECORDS AND SECURE DIGITAL SIGNATURES

Secure  
electronic  
record.

14. Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

Secure digital  
signature.

15. If, by application of a security procedure agreed to by the parties concerned, it can be verified that a digital signature, at the time it was affixed, was—

- (a) unique to the subscriber affixing it;
- (b) capable of identifying such subscriber;
- (c) created in a manner or using a means under the exclusive control of the subscriber and is linked to the electronic record to which it relates in such a manner that if the electronic record was altered the digital signature would be invalidated, then such digital signature shall be deemed to be a secure digital signature.

Security  
procedure.

16. The Central Government shall for the purposes of this Act prescribe the security procedure having regard to commercial circumstances prevailing at the time when the procedure was used, including—

- (a) the nature of the transaction;
- (b) the level of sophistication of the parties with reference to their technological capacity;
- (c) the volume of similar transactions engaged in by other parties;
- (d) the availability of alternatives offered to but rejected by any party;
- (e) the cost of alternative procedures; and
- (f) the procedures in general use for similar types of transactions or communications.

## CHAPTER VI

## REGULATION OF CERTIFYING AUTHORITIES

Appointment of  
Controller and  
other officers.

17. (1) The Central Government may, by notification in the Official Gazette, appoint a Controller of Certifying Authorities for the purposes of this Act and may also by the same or subsequent notification appoint such number of Deputy Controllers and Assistant Controllers as it deems fit.

(2) The Controller shall discharge his functions under this Act subject to the general control and directions of the Central Government.

(3) The Deputy Controllers and Assistant Controllers shall perform the functions assigned to them by the Controller under the general superintendence and control of the Controller.

(4) The qualifications, experience and terms and conditions of service of Controller, Deputy Controllers and Assistant Controllers shall be such as may be prescribed by the Central Government.

(5) The Head Office and Branch Office of the office of the Controller shall be at such places as the Central Government may specify, and these may be established at such places as the Central Government may think fit.

(6) There shall be a seal of the Office of the Controller.

Functions of  
Controller.

18. The Controller may perform all or any of the following functions, namely:—

- (a) exercising supervision over the activities of the Certifying Authorities;
- (b) certifying public keys of the Certifying Authorities;
- (c) laying down the standards to be maintained by the Certifying Authorities;

(d) specifying the qualifications and experience which employees of the Certifying Authorities should possess;

(e) specifying the conditions subject to which the Certifying Authorities shall conduct their business;

(f) specifying the contents of written, printed or visual materials and advertisements that may be distributed or used in respect of a Digital Signature Certificate and the public key;

(g) specifying the form and content of a Digital Signature Certificate and the key;

(h) specifying the form and manner in which accounts shall be maintained by the Certifying Authorities;

(i) specifying the terms and conditions subject to which auditors may be appointed and the remuneration to be paid to them;

(j) facilitating the establishment of any electronic system by a Certifying Authority either solely or jointly with other Certifying Authorities and regulation of such systems;

(k) specifying the manner in which the Certifying Authorities shall conduct their dealings with the subscribers;

(l) resolving any conflict of interests between the Certifying Authorities and the subscribers;

(m) laying down the duties of the Certifying Authorities;

(n) maintaining a data base containing the disclosure record of every Certifying Authority containing such particulars as may be specified by regulations, which shall be accessible to public.

19. (1) Subject to such conditions and restrictions as may be specified by regulations, the Controller may with the previous approval of the Central Government, and by notification in the Official Gazette, recognise any foreign Certifying Authority as a Certifying Authority for the purposes of this Act.

Recognition  
of foreign  
Certifying  
Authorities.

(2) Where any Certifying Authority is recognised under sub-section (1), the Digital Signature Certificate issued by such Certifying Authority shall be valid for the purposes of this Act.

(3) The Controller may, if he is satisfied that any Certifying Authority has contravened any of the conditions and restrictions subject to which it was granted recognition under sub-section (1) he may, for reasons to be recorded in writing, by notification in the Official Gazette, revoke such recognition.

20. (1) The Controller shall be the repository of all Digital Signature Certificates issued under this Act.

Controller  
to act as  
repository.

(2) The Controller shall—

(a) make use of hardware, software and procedures that are secure from intrusion and misuse;

(b) observe such other standards as may be prescribed by the Central Government,

to ensure that the secrecy and security of the digital signatures are assured.

(3) The Controller shall maintain a computerised data base of all public keys in such a manner that such data base and the public keys are available to any member of the public.

21. (1) Subject to the provisions of sub-section (2), any person may make an application, to the Controller, for a licence to issue Digital Signature Certificates.

Licence to issue  
Digital Signa-  
ture Certificates.

(2) No licence shall be issued under sub-section (1), unless the applicant fulfills such requirements with respect to qualification, expertise, manpower, financial resources and other infrastructure facilities, which are necessary to issue Digital Signature Certificates as may be prescribed by the Central Government.

(3) A licence granted under this section shall—

- (a) be valid for such period as may be prescribed by the Central Government;
- (b) not be transferable or heritable;
- (c) be subject to such terms and conditions as may be specified by the regulations.

Application for  
licence.

22. (1) Every application for issue of a licence shall be in such form as may be prescribed by the Central Government.

(2) Every application for issue of a licence shall be accompanied by—

- (a) a certification practice statement;
- (b) a statement including the procedures with respect to identification of the applicant;
- (c) payment of such fees, not exceeding twenty-five thousand rupees as may be prescribed by the Central Government;
- (d) such other documents, as may be prescribed by the Central Government.

Renewal of  
licence.

23. An application for renewal of a licence shall be—

- (a) in such form;
- (b) accompanied by such fees, not exceeding five thousand rupees,

as may be prescribed by the Central Government and shall be made not less than forty-five days before the date of expiry of the period of validity of the licence.

Procedure for  
grant or  
rejection of  
licence.

24. The Controller may, on receipt of an application under sub-section (1) of section 21, after considering the documents accompanying the application and such other factors, as he deems fit, grant the licence or reject the application:

Provided that no application shall be rejected under this section unless the applicant has been given a reasonable opportunity of presenting his case.

Suspension of  
licence.

25. (1) The Controller may, if he is satisfied after making such inquiry, as he may think fit, that a Certifying Authority has,—

- (a) made a statement in, or in relation to, the application for the issue or renewal of the licence, which is incorrect or false in material particulars;
- (b) failed to comply with the terms and conditions subject to which the licence was granted;
- (c) failed to maintain the standards specified under clause (b) of sub-section (2) of section 20;
- (d) contravened any provisions of this Act, rule, regulation or order made thereunder,

revoke the licence:

Provided that no licence shall be revoked unless the Certifying Authority has been given a reasonable opportunity of showing cause against the proposed revocation.

(2) The Controller may, if he has reasonable cause to believe that there is any ground for revoking a licence under sub-section (1), by order suspend such licence pending the completion of any inquiry ordered by him:

Provided that no licence shall be suspended for a period exceeding ten days unless the Certifying Authority has been given a reasonable opportunity of showing cause against the proposed suspension.

(3) No Certifying Authority whose licence has been suspended shall issue any Digital Signature Certificate during such suspension.

26. (1) Where the licence of the Certifying Authority is suspended or revoked, the Controller shall publish notice of such suspension or revocation, as the case may be, in the data base maintained by him.

Notice of suspension or revocation of licence.

(2) Where one or more repositories are specified, the Controller shall publish notices of such suspension or revocation, as the case may be, in all such repositories:

Provided that the data base containing the notice of such suspension or revocation, as the case may be, shall be made available through a web site which shall be accessible round the clock:

Provided further that the Controller may, if he considers necessary, publicise the contents of data base in such electronic or other media, as he may consider appropriate.

27. The Controller may, in writing, authorise the Deputy Controller, Assistant Controller or any officer to exercise any of the powers of the Controller under this Chapter.

Power to delegate.

28. (1) The Controller or any officer authorised by him in this behalf shall take up for investigation any contravention of the provisions of this Act, rules or regulations made thereunder.

Power to investigate contraventions.

(2) The Controller or any officer authorised by him in this behalf shall exercise the like powers which are conferred on Income-tax authorities under Chapter XIII of the Income-tax Act, 1961 and shall exercise such powers, subject to such limitations laid down under that Act.

43 of 1961.

29. (1) Without prejudice to the provisions of sub-section (1) of section 69, the Controller or any person authorised by him shall, if he has reasonable cause to suspect that any contravention of the provisions of this Act, rules or regulations made thereunder has been committed, have access to any computer system, any apparatus, data or any other material connected with such system, for the purpose of searching or causing a search to be made for obtaining any information or data contained in or available to such computer system.

Access to computers and data.

(2) For the purposes of sub-section (1), the Controller or any person authorised by him may, by order, direct any person incharge of, or otherwise concerned with the operation of, the computer system, data apparatus or material, to provide him with such reasonable technical and other assistance as he may consider necessary.

30. Every Certifying Authority shall,—

(a) make use of hardware, software and procedures that are secure from intrusion and misuse;

(b) provide a reasonable level of reliability in its services which are reasonably suited to the performance of intended functions;

(c) adhere to security procedures to ensure that the secrecy and privacy of the digital signatures are assured; and

(d) observe such other standards as may be specified by regulations.

Certifying Authority to follow certain procedures.

31. Every Certifying Authority shall ensure that every person employed or otherwise engaged by it complies, in the course of his employment or engagement, with the provisions of this Act, rules, regulations and orders made thereunder.

Certifying Authority to ensure compliance of the Act, etc.

32. Every Certifying Authority shall display its licence at a conspicuous place of the premises in which it carries on its business.

Display of licence.

33. (1) Every Certifying Authority whose licence is suspended or revoked shall immediately after such suspension or revocation, surrender the licence to the Controller.

Surrender of licence.

(2) Where any Certifying Authority fails to surrender a licence under sub-section (1), the person in whose favour a licence is issued, shall be guilty of an offence and shall be punished with imprisonment which may extend up to six months or a fine which may extend up to ten thousand rupees or with both.



**Disclosure.**

**34. (1)** Every Certifying Authority shall disclose in the manner specified by regulations—

(a) its Digital Signature Certificate which contains the public key corresponding to the private key used by that Certifying Authority to digitally sign another Digital Signature Certificate;

(b) any certification practice statement relevant thereto;

(c) notice of the revocation or suspension of its Certifying Authority certificate, if any; and

(d) any other fact that materially and adversely affects either the reliability of a Digital Signature Certificate, which that Authority has issued, or the Authority's ability to perform its services.

(2) Where in the opinion of the Certifying Authority any event has occurred or any situation has arisen which may materially and adversely affect the integrity of its computer system or the conditions subject to which a Digital Signature Certificate was granted, then, the Certifying Authority shall—

(a) use reasonable efforts to notify any person who is likely to be affected by that occurrence; or

(b) act in accordance with the procedure specified in its certification practice statement to deal with such event or situation.

## CHAPTER VII

### DIGITAL SIGNATURE CERTIFICATES

**Certifying Authority to issue Digital Signature Certificate.**

**35. (1)** Any person may make an application to the Certifying Authority for the issue of a Digital Signature Certificate in such form as may be prescribed by the Central Government.

(2) Every such application shall be accompanied by such fee not exceeding twenty-five thousand rupees as may be prescribed by the Central Government, to be paid to the Certifying Authority:

Provided that while prescribing fees under sub-section (2) different fees may be prescribed for different classes of applicants.

(3) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.

(4) On receipt of an application under sub-section (1), the Certifying Authority may, after consideration of the certification practice statement or the other statement under sub-section (3) and after making such enquiries as it may deem fit, grant the Digital Signature Certificate or for reasons to be recorded in writing, reject the application:

Provided that no Digital Signature Certificate shall be granted unless the Certifying Authority is satisfied that—

(a) the applicant holds the private key corresponding to the public key to be listed in the Digital Signature Certificate;

(b) the applicant holds a private key, which is capable of creating a digital signature;

(c) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the applicant:

Provided further that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

36. A Certifying Authority while issuing a Digital Signature Certificate shall certify that—

Representations  
upon issuance  
of Digital  
Signature  
Certificate.

(a) it has complied with the provisions of this Act and the rules and regulations made thereunder;

(b) it has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it;

(c) the subscriber holds the private key corresponding to the public key, listed in the Digital Signature Certificate;

(d) the subscriber's public key and private key constitute a functioning key pair;

(e) the information contained in the Digital Signature Certificate is accurate; and

(f) it has no knowledge of any material fact, which if it had been included in the Digital Signature Certificate would adversely affect the reliability of the representations made in clauses (a) to (d).

37. (1) Subject to the provisions of sub-section (2), the Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate,—

Suspension  
of Digital  
Signature  
Certificate.

(a) on receipt of a request to that effect from—

(i) the subscriber listed in the Digital Signature Certificate; or

(ii) any person duly authorised to act on behalf of that subscriber;

(b) if it is of opinion that the Digital Signature Certificate should be suspended in public interest.

(2) A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.

(3) On suspension of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

38. (1) A Certifying Authority may revoke a Digital Signature Certificate issued by it—

Revocation  
of Digital  
Signature  
Certificate.

(a) where the subscriber or any other person authorised by him makes a request to that effect; or

(b) upon the death of the subscriber; or

(c) upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

(2) Subject to the provisions of sub-section (3) and without prejudice to the provisions of sub-section (1), a Certifying Authority may revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that—

(a) a material fact represented in the Digital Signature Certificate is false or has been concealed;

(b) a requirement for issuance of the Digital Signature Certificate was not satisfied;

(c) the Certifying Authority's private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability;

(d) the subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.

(3) A Digital Signature Certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.

(4) On revocation of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Notice of  
suspension or  
revocation.

39. (1) Where a Digital Signature Certificate is suspended or revoked under section 37 or section 38, the Certifying Authority shall publish a notice of such suspension or revocation, as the case may be, in the repository specified in the Digital Signature Certificate for publication of such notice.

(2) Where one or more repositories are specified, the Certifying Authority shall publish notices of such suspension or revocation, as the case may be, in all such repositories.

## CHAPTER VIII

### DUTIES OF SUBSCRIBERS

Generating  
key pair.

40. Where any Digital Signature Certificate, the public key of which corresponds to the private key of that subscriber which is to be listed in the Digital Signature Certificate has been accepted by a subscriber, then, the subscriber shall generate the key pair by applying the security procedure.

Acceptance  
of Digital  
Signature  
Certificate.

41. (1) A subscriber shall be deemed to have accepted a Digital Signature Certificate if he publishes or authorises the publication of a Digital Signature Certificate—

(a) to one or more persons;

(b) in a repository, or

otherwise demonstrates his approval of the Digital Signature Certificate in any manner.

(2) By accepting a Digital Signature Certificate the subscriber certifies to all who reasonably rely on the information contained in the Digital Signature Certificate that—

(a) the subscriber holds the private key corresponding to the public key listed in the Digital Signature Certificate and is entitled to hold the same;

(b) all representations made by the subscriber to the Certifying Authority and all material relevant to the information contained in the Digital Signature Certificate are true;

(c) all information in the Digital Signature Certificate that is within the knowledge of the subscriber is true.

Control of  
private key.

42. (1) Every subscriber shall exercise reasonable care to retain control of the private key corresponding to the public key listed in his Digital Signature Certificate and take all steps to prevent its disclosure to a person not authorised to affix the digital signature of the subscriber.

(2) If the private key corresponding to the public key listed in the Digital Signature Certificate has been compromised, then, the subscriber shall communicate the same without any delay to the Certifying Authority in such manner as may be specified by the regulations.

*Explanation.*—For the removal of doubts, it is hereby declared that the subscriber shall be liable till he has informed the Certifying Authority that the private key has been compromised.

## CHAPTER IX

### PENALTIES AND ADJUDICATION

Penalty for  
damage to  
computer,  
computer  
system, etc.

43. If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,—

(a) accesses or secures access to such computer, computer system or computer network;

(b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

(c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

(e) disrupts or causes disruption of any computer, computer system or computer network;

(f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

(g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;

(h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network,

he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.

*Explanation.*—For the purposes of this section,—

(i) “computer contaminant” means any set of computer instructions that are designed—

(a) to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or

(b) by any means to usurp the normal operation of the computer, computer system, or computer network;

(ii) “computer data base” means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;

(iii) “computer virus” means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource;

(iv) “damage” means to destroy, alter, delete, add, modify or rearrange any computer resource by any means.

44. If any person who is required under this Act or any rules or regulations made thereunder to—

(a) furnish any document, return or report to the Controller or the Certifying Authority fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure;

(b) file any return or furnish any information, books or other documents within the time specified therefor in the regulations fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues;

Penalty for failure to furnish information, return, etc.



(c) maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

Residuary  
penalty.

45. Whoever contravenes any rules or regulations made under this Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a compensation not exceeding twenty-five thousand rupees to the person affected by such contravention or a penalty not exceeding twenty-five thousand rupees.

Power to  
adjudicate.

46. (1) For the purpose of adjudging under this Chapter whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, direction or order made thereunder the Central Government shall, subject to the provisions of sub-section (3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government.

(2) The adjudicating officer shall, after giving the person referred to in sub-section (1) a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty or award such compensation as he thinks fit in accordance with the provisions of that section.

(3) No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and legal or judicial experience as may be prescribed by the Central Government.

(4) Where more than one adjudicating officers are appointed, the Central Government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction.

(5) Every adjudicating officer shall have the powers of a civil court which are conferred on the Cyber Appellate Tribunal under sub-section (2) of section 58, and—

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code;

45 of 1860.

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973;

2 of 1974.

Factors to be  
taken into  
account by the  
adjudicating  
officer.

47. While adjudging the quantum of compensation under this Chapter, the adjudicating officer shall have due regard to the following factors, namely:—

(a) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to any person as a result of the default;

(c) the repetitive nature of the default.

## CHAPTER X

### THE CYBER REGULATIONS APPELLATE TRIBUNAL

Establishment  
of Cyber  
Appellate  
Tribunal.

48. (1) The Central Government shall, by notification, establish one or more appellate tribunals to be known as the Cyber Regulations Appellate Tribunal.

(2) The Central Government shall also specify, in the notification referred to in sub-section (1), the matters and places in relation to which the Cyber Appellate Tribunal may exercise jurisdiction.

Composition  
of Cyber  
Appellate  
Tribunal.

49. A Cyber Appellate Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer of the Cyber Appellate Tribunal) to be appointed, by notification, by the Central Government.

50. A person shall not be qualified for appointment as the Presiding Officer of a Cyber Appellate Tribunal unless he—

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) is or has been a member of the Indian Legal Service and is holding or has held a post in Grade I of that Service for at least three years.

Qualifications for appointment as Presiding Officer of the Cyber Appellate Tribunal.

51. The Presiding Officer of a Cyber Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

Term of office.

52. The salary and allowances payable to, and the other terms and conditions of service including pension, gratuity and other retirement benefits of, the Presiding Officer of a Cyber Appellate Tribunal shall be such as may be prescribed:

Salary, allowances and other terms and conditions of service of Presiding Officer.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Presiding Officer shall be varied to his disadvantage after appointment.

53. If, for reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of a Cyber Appellate Tribunal, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Cyber Appellate Tribunal from the stage at which the vacancy is filled.

Filling up of vacancies.

54. (1) The Presiding Officer of a Cyber Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation and removal.

Provided that the said Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Presiding Officer of a Cyber Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which the Presiding Officer concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the aforesaid Presiding Officer.

55. No order of the Central Government appointing any person as the Presiding Officer of a Cyber Appellate Tribunal shall be called in question in any manner and no act or proceeding before a Cyber Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Cyber Appellate Tribunal.

Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings.

56. (1) The Central Government shall provide the Cyber Appellate Tribunal with such officers and employees as that Government may think fit.

Staff of the Cyber Appellate Tribunal.

(2) The officers and employees of the Cyber Appellate Tribunal shall discharge their functions under general superintendence of the Presiding Officer.

(3) The salaries, allowances and other conditions of service of the officers and employees of the Cyber Appellate Tribunal shall be such as may be prescribed by the Central Government.

Appeal to  
Cyber  
Appellate  
Tribunal.

57. (1) Save as provided in sub-section (2), any person aggrieved by an order made by Controller or an adjudicating officer under this Act may prefer an appeal to a Cyber Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Cyber Appellate Tribunal from an order made by an adjudicating officer with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Controller or the adjudicating officer is received by the person aggrieved and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Cyber Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Cyber Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Cyber Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Controller or adjudicating officer.

(6) The appeal filed before the Cyber Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure and  
powers of the  
Cyber  
Appellate  
Tribunal.

58. (1) The Cyber Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Cyber Appellate Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.

5 of 1908.

(2) The Cyber Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents or other electronic records;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte*;

(g) any other matter which may be prescribed.

(3) Every proceeding before the Cyber Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Cyber Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

Right to legal  
representation.

59. The appellant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Cyber Appellate Tribunal.



36 of 1963.

60. The provisions of the Limitation Act, 1963, shall, as far as may be, apply to an appeal made to the Cyber Appellate Tribunal.

Limitation.

61. No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Cyber Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Civil court not to have jurisdiction.

62. Any person aggrieved by any decision or order of the Cyber Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Cyber Appellate Tribunal to him on any question of fact or law arising out of such order.

Appeal to High Court.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

63. (1) Any contravention under this Chapter may, either before or after the institution of adjudication proceedings, be compounded by the Controller or such other officer as may be specially authorised by him in this behalf or by the adjudicating officer, as the case may be, subject to such conditions as the Controller or such other officer or the adjudicating officer may specify:

Compounding of contraventions.

Provided that such sum shall not, in any case, exceed the maximum amount of the penalty which may be imposed under this Act for the contravention so compounded.

(2) Nothing in sub-section (1) shall apply to a person who commits the same or similar contravention within a period of three years from the date on which the first contravention, committed by him, was compounded.

*Explanation.*—For the purposes of this sub-section, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

(3) Where any contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the person guilty of such contravention in respect of the contravention so compounded.

64. A penalty imposed under this Act, if it is not paid, shall be recovered as an arrear of land revenue and the licence or the Digital Signature Certificate, as the case may be, shall be suspended till the penalty is paid.

Recovery of penalty.

## CHAPTER XI

### OFFENCES

65. Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

Tampering with computer source documents.

*Explanation.*—For the purposes of this section, "computer source code" means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.

66. (1) Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking.

Hacking with computer system.

(2) Whoever commits hacking shall be punished with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

67. Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

Publishing of information which is obscene in electronic form.



Power of  
Controller to  
give directions.

68. (1) The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this Act, rules or any regulations made thereunder.

(2) Any person who fails to comply with any order under sub-section (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding two lakh rupees or to both.

Directions of  
Controller to a  
subscriber to  
extend facilities  
to decrypt  
information.

69. (1) If the Controller is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence, for reasons to be recorded in writing, by order, direct any agency of the Government to intercept any information transmitted through any computer resource.

(2) The subscriber or any person incharge of the computer resource shall, when called upon by any agency which has been directed under sub-section (1), extend all facilities and technical assistance to decrypt the information.

(3) The subscriber or any person who fails to assist the agency referred to in sub-section (2) shall be punished with an imprisonment for a term which may extend to seven years.

Protected  
system

70. (1) The appropriate Government may, by notification in the Official Gazette, declare that any computer, computer system or computer network to be a protected system.

(2) The appropriate Government may, by order in writing, authorise the persons who are authorised to access protected systems notified under sub-section (1).

(3) Any person who secures access or attempts to secure access to a protected system in contravention of the provisions of this section shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Penalty for  
misrepresentation.

71. Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any licence or Digital Signature Certificate, as the case may be, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Penalty for  
breach of  
confidentiality  
and  
privacy.

72. Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Penalty for  
publishing  
Digital  
Signature  
Certificate  
false in certain  
particulars.

73. (1) No person shall publish a Digital Signature Certificate or otherwise make it available to any other person with the knowledge that—

(a) the Certifying Authority listed in the certificate has not issued it; or

(b) the subscriber listed in the certificate has not accepted it; or

(c) the certificate has been revoked or suspended,

unless such publication is for the purpose of verifying a digital signature created prior to such suspension or revocation.

(2) Any person who contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

74. Whoever knowingly creates, publishes or otherwise makes available a Digital Signature Certificate for any fraudulent or unlawful purpose shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Publication for fraudulent purpose.

75. (1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

Act to apply for offence or contravention committed outside India.

(2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.

76. Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provision of this Act, rules, orders or regulations made thereunder has been or is being contravened, shall be liable to confiscation:

Confiscation.

Provided that where it is established to the satisfaction of the court adjudicating the confiscation that the person in whose possession, power or control of any such computer, computer system, floppies, compact disks, tape drives or any other accessories relating thereto is found is not responsible for the contravention of the provisions of this Act, rules, orders or regulations made thereunder, the court may, instead of making an order for confiscation of such computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, make such other order authorised by this Act against the person contravening of the provisions of this Act, rules, orders or regulations made thereunder as it may think fit.

77. No penalty imposed or confiscation made under this Act shall prevent the imposition of any other punishment to which the person affected thereby is liable under any other law for the time being in force.

Penalties or confiscation not to interfere with other punishments.

2 of 1974.

78. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a police officer not below the rank of Deputy Superintendent of Police shall investigate any offence under this Act.

Power to investigate offences.

## CHAPTER XII

### NETWORK SERVICE PROVIDERS NOT TO BE LIABLE IN CERTAIN CASES

79. For the removal of doubts, it is hereby declared that no person providing any service as a network service provider shall be liable under this Act, rules or regulations made thereunder for any third party information or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.

Network service providers not to be liable in certain cases.

*Explanation.*—For the purposes of this section,—

(a) "network service provider" means an intermediary;

(b) "third party information" means any information dealt with by a network service provider in his capacity as an intermediary;

VI-EX 38-6.

## CHAPTER XIII

## MISCELLANEOUS

Power of police officer and other officers to enter, search, etc.

80. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any police officer, not below the rank of a Deputy Superintendent of Police, or any other officer of the Central Government or a State Government authorised by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected or having committed or of committing or of being about to commit any offence under this Act. 2 of 1974.

*Explanation.*—For the purposes of this sub-section, the expression “public place” includes any public conveyance, any hotel, any shop or any other place intended for use by, or accessible to the public.

(2) Where any person is arrested under sub-section (1) by an officer other than a police officer, such officer shall, without unnecessary delay, take or send the person arrested before a magistrate having jurisdiction in the case or before the officer-in-charge of a police station.

(3) The provisions of the Code of Criminal Procedure, 1973 shall, subject to the provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section. 2 of 1974.

Act to have overriding effect.

81. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Controller, Deputy Controller and Assistant Controllers to be public servants.

82. The Presiding Officer and other officers and employees of a Cyber Appellate Tribunal, the Controller, the Deputy Controller and the Assistant Controllers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Power to give directions.

83. The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any rule, regulation or order made thereunder.

Protection of action taken in good faith.

84. No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Controller or any person acting on behalf of him, the Presiding Officer, adjudicating officers and the staff of the Cyber Appellate Tribunal for anything which is in good faith done or intended to be done in pursuance of this Act or any rule, regulation or order made thereunder.

Offences by companies.

85. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary

or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

(i) “company” means any body corporate and includes a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

86. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Removal of difficulties.

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

87. (1) The Central Government may, by notification in the Official Gazette and in the Electronic Gazette make rules to carry out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which any information or matter may be authenticated by means of digital signature under section 5;

(b) the electronic form in which filing, issue, grant or payment shall be effected under sub-section (1) of section 6;

(c) the manner and format in which electronic records shall be filed, or issued and the method of payment under sub-section (2) of section 6;

(d) the matters relating to the type of digital signature, manner and format in which it may be affixed under section 10;

(e) the security procedure for the purpose of creating secure electronic record and secure digital signature under section 16;

(f) the qualifications, experience and terms and conditions of service of Controller, Deputy Controllers and Assistant Controllers under section 17;

(g) other standards to be observed by the Controller under clause (b) of sub-section (2) of section 20;

(h) the requirements which an applicant must fulfil under sub-section (2) of section 21;

(i) the period of validity of licence granted under clause (a) of sub-section (3) of section 21;

(j) the form in which an application for licence may be made under sub-section (1) of section 22;

(k) the amount of fees payable under clause (c) of sub-section (2) of section 22;

(l) such other documents which shall accompany an application for licence under clause (d) of sub-section (2) of section 22;

(m) the form and the fee for renewal of a licence and the fee payable thereof under section 23;

(n) the form in which application for issue of a Digital Signature Certificate may be made under sub-section (1) of section 35;

(o) the fee to be paid to the Certifying Authority for issue of a Digital Signature Certificate under sub-section (2) of section 35;



(p) the manner in which the adjudicating officer shall hold inquiry under sub-section (1) of section 46;

(q) the qualification and experience which the adjudicating officer shall possess under sub-section (3) of section 46;

(r) the salary, allowances and the other terms and conditions of service of the Presiding Officer under section 52;

(s) the procedure for investigation of misbehaviour or incapacity of the Presiding Officer under sub-section (3) of section 54;

(t) the salary and allowances and other conditions of service of other officers and employees under sub-section (3) of section 56;

(u) the form in which appeal may be filed and the fee thereof under sub-section (3) of section 57;

(v) any other power of a civil court required to be prescribed under clause (g) of sub-section (2) of section 58; and

(w) any other matter which is required to be, or may be, prescribed.

(3) Every notification made by the Central Government under clause (f) of sub-section (4) of section 1 and every rule made by it shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or both Houses agree that the notification or the rule should not be made, the notification or the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

Constitution of  
Advisory  
Committee.

88. (1) The Central Government shall, as soon as may be after the commencement of this Act, constitute a Committee called the Cyber Regulations Advisory Committee.

(2) The Cyber Regulations Advisory Committee shall consist of a Chairperson and such number of other official and non-official members representing the interests principally affected or having special knowledge of the subject-matter as the Central Government may deem fit.

(3) The Cyber Regulations Advisory Committee shall advise—

(a) the Central Government either generally as regards any rules or for any other purpose connected with this Act;

(b) the Controller in framing the regulations under this Act.

(4) There shall be paid to the non-official members of such Committee such travelling and other allowances as the Central Government may fix.

Power of  
Controller to  
make  
regulations.

89. (1) The Controller may, after consultation with the Cyber Regulations Advisory Committee and with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the particulars relating to maintenance of data-base containing the disclosure record of every Certifying Authority under clause (m) of section 18;

(b) the conditions and restrictions subject to which the Controller may recognise any foreign Certifying Authority under sub-section (1) of section 19;

(c) the terms and conditions subject to which a licence may be granted under clause (c) of sub-section (3) of section 21;

(d) other standards to be observed by a Certifying Authority under clause (d) of section 30;

(e) the manner in which the Certifying Authority shall disclose the matters specified in sub-section (1) of section 34;

(f) the particulars of statement which shall accompany an application under sub-section (3) of section 35;

(g) the manner in which the subscriber shall communicate the compromise of private key to the certifying Authority under sub-section (2) of section 42.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

90. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power of State Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the electronic form in which filing, issue, grant receipt or payment shall be effected under sub-section (1) of section 6;

(b) for matters specified in sub-section (2) of section 6;

(c) any other matter which is required to be provided by rules by the State Government.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

91. The Indian Penal Code shall be amended in the manner specified in the First Schedule to this Act.

Amendment of Act 45 of 1860.

92. The Indian Evidence Act, 1872 shall be amended in the manner specified in the Second Schedule to this Act.

Amendment of Act 1 of 1872.

93. The Bankers' Books Evidence Act, 1891 shall be amended in the manner specified in the Third Schedule to this Act.

Amendment of Act 18 of 1891.

94. The Reserve Bank of India Act, 1934 shall be amended in the manner specified in the Fourth Schedule to this Act.

Amendment of Act 2 of 1934.

### THE FIRST SCHEDULE

(See section 91)

#### AMENDMENTS TO THE INDIAN PENAL CODE

(45 OF 1860)

1. After section 29, the following section shall be inserted, namely:—

"29A. The words "electronic record" shall have the meaning assigned to them in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000."

Electronic record.

2. In section 167, for the words "such public servant, charged with the preparation or translation of any document, frames or translates that document", the words "such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record" shall be substituted.

VI-EX-38-7.

3. In section 172, for the words "produce a document in a Court of Justice", the words "produce a document or an electronic record in a Court of Justice" shall be substituted.

4. In section 173, for the words "to produce a document in a Court of Justice", the words "to produce a document or electronic record in a Court of Justice" shall be substituted.

5. In section 175, for the word "document" at both the places where it occurs, the words "document or electronic record" shall be substituted.

6. In section 192, for the words "makes any false entry in any book or record, or makes any document containing a false statement", the words "makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement" shall be substituted.

7. In section 204, for the word "document" at both the places where it occurs, the words "document or electronic record" shall be substituted.

8. In section 463, for the words "Whoever makes any false documents or part of a document with intent to cause damage or injury", the words "Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury" shall be substituted.

9. In section 464,—

(a) for the portion beginning with the words "A person is said to make a false document" and ending with the words "by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration", the following shall be substituted, namely:—

"A person is said to make a false document or false electronic record—

First—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature,

with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.";

(b) after *Explanation 2*, the following *Explanation* shall be inserted at the end, namely:—

*Explanation 3.*—For the purposes of this section, the expression "affixing digital signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000."

## 10. In section 466,—

(a) for the words "Whoever forges a document", the words "Whoever forges a document or an electronic record" shall be substituted;

(b) the following *Explanation* shall be inserted at the end, namely:—

*Explanation.*—For the purposes of this section, "register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000.

11. In section 468, for the words "document forged", the words "document or electronic record forged" shall be substituted.

12. In section 469, for the words "intending that the document forged", the words "intending that the document or electronic record forged" shall be substituted.

13. In section 470, for the word "document" in both the places where it occurs, the words "document or electronic record" shall be substituted.

14. In section 471, for the word "document" wherever it occurs, the words "document or electronic record" shall be substituted.

15. In section 474, for the portion beginning with the words "Whoever has in his possession any document" and ending with the words "if the document is one of the description mentioned in section 466 of this Code", the following shall be substituted, namely:—

"Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as a genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code."

16. In section 476, for the words "any document", the words "any document or electronic record" shall be substituted.

17. In section 477A, for the words "book, paper, writing" at both the places where they occur, the words "book, electronic record, paper, writing" shall be substituted.

### THE SECOND SCHEDULE

(See section 92)

#### AMENDMENTS TO THE INDIAN EVIDENCE ACT, 1872

(1 OF 1872)

## 1. In section 3,—

(a) in the definition of "Evidence", for the words "all documents produced for the inspection of the Court", the words "all documents including electronic records produced for the inspection of the Court" shall be substituted;

(b) after the definition of "India", the following shall be inserted, namely:—  
'the expressions "Certifying Authority", "digital signature", "Digital Signature Certificate", "electronic form", "electronic records", "information", "secure electronic record", "secure digital signature" and "subscriber" shall have the meanings respectively assigned to them in the Information Technology Act, 2000.'

2. In section 17, for the words "oral or documentary," the words "oral or documentary or contained in electronic form" shall be substituted.

3. After section 22, the following section shall be inserted, namely:—

"22A. Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question."

When oral admission as to contents of electronic records are relevant.



4. In section 34, for the words "Entries in the books of account", the words "Entries in the books of account, including those maintained in an electronic form" shall be substituted.

5. In section 35, for the word "record", in both the places where it occurs, the words "record or an electronic record" shall be substituted.

6. For section 39, the following section shall be substituted, namely:—

What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.

"39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made."

7. After section 47, the following section shall be inserted, namely:—

Opinion as to digital signature when relevant.

"47A. When the Court has to form an opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate is a relevant fact."

8. In section 59, for the words "contents of documents" the words "contents of documents or electronic records" shall be substituted.

9. After section 65, the following sections shall be inserted, namely:—

Special provisions as to evidence relating to electronic record.

'65A. The contents of electronic records may be proved in accordance with the provisions of section 65B.

Admissibility of electronic records.

65B. (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

*Explanation.*—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

10. After section 67, the following section shall be inserted, namely:—

"67A. Except in the case of a secure digital signature, if the digital signature of any subscriber is alleged to have been affixed to an electronic record the fact that such digital signature is the digital signature of the subscriber must be proved."

Proof as to  
digital  
signature.

11. After section 73, the following section shall be inserted, namely:—

"73A. In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct—

Proof as to  
verification of  
digital  
signature.

(a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;

VI Ex-38-8.

(b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

*Explanation.*—For the purposes of this section, “Controller” means the Controller appointed under sub-section (1) of section 17 of the Information Technology Act, 2000.

12. After section 81, the following section shall be inserted, namely:—

“81A. The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette, or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.”

13. After section 85, the following sections shall be inserted, namely:—

“85A. The Court shall presume that every electronic record purporting to be an agreement containing the digital signatures of the parties was so concluded by affixing the digital signature of the parties.

85B. (1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

(2) In any proceedings, involving secure digital signature, the Court shall presume unless the contrary is proved that—

(a) the secure digital signature is affixed by subscriber with the intention of signing or approving the electronic record;

(b) except in the case of a secure electronic record or a secure digital signature, nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any digital signature.

85C. The Court shall presume, unless contrary is proved, that the information listed in a Digital Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.”

14. After section 88, the following section shall be inserted, namely:—

“88A. The Court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

*Explanation.*—For the purposes of this section, the expressions “addressee” and “originator” shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of section 2 of the Information Technology Act, 2000.”

15. After section 90, the following section shall be inserted, namely:—

“90A. Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the digital signature which purports to be the digital signature of any particular person was so affixed by him or any person authorised by him in this behalf.

*Explanation.*—Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

This *Explanation* applies also to section 81A.”

16. For section 131, the following section shall be substituted, namely:—

Presumption as to Gazettes in electronic forms.

Presumption as to electronic agreements.

Presumption as to electronic records and digital signatures.

Presumption as to Digital Signature Certificates.

Presumption as to electronic messages.

Presumption as to electronic records five years old.

"131. No one shall be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession or control, unless such last-mentioned person consents to their production."

Production of documents or electronic records which another person, having possession, could refuse to produce.

### THE THIRD SCHEDULE

(See section 93)

#### AMENDMENTS TO THE BANKERS' BOOKS EVIDENCE ACT '891 (18 OF 1891)

##### 1. In section 2—

(a) for clause (3), the following clause shall be substituted, namely:—

'(3) "bankers' books" include ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of a bank whether kept in the written form or as printouts of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device;

(b) for clause (8), the following clause shall be substituted, namely:—

'(8) "certified copy" means when the books of a bank,—

(a) are maintained in written form, a copy of any entry in such books together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book is still in the custody of the bank, and where the copy was obtained by a mechanical or other process which in itself ensured the accuracy of the copy, a further certificate to that effect, but where the book from which such copy was prepared has been destroyed in the usual course of the bank's business after the date on which the copy had been so prepared, a further certificate to that effect, each such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title; and

(b) consist of printouts of data stored in a floppy, disc, tape or any other electro-magnetic data storage device, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of section 2A.'

##### 2. After section 2, the following section shall be inserted, namely:—

"2A. A printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by the following, namely:—

Conditions in the printout.

(a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and

(b) a certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of—

(A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorised persons;

(B) the safeguards adopted to prevent and detect unauthorised change of data;

(C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;

(D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices;

(E) the mode of verification in order to ensure that data has been accurately transferred to such removable media;



- (F) the mode of identification of such data storage devices;
  - (G) the arrangements for the storage and custody of such storage devices;
  - (H) the safeguards to prevent and detect any tampering with the system; and
  - (I) any other factor which will vouch for the integrity and accuracy of the system.
- (c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data."

#### THE FOURTH SCHEDULE

(See section 94)

AMENDMENT TO THE RESERVE BANK OF INDIA ACT, 1934

(2 OF 1934)

In the Reserve Bank of India Act, 1934, in section 58, in sub-section (2), after clause (p), the following clause shall be inserted, namely:—

"(pp) the regulation of fund transfer through electronic means between the banks or between the banks and other financial institutions referred to in clause (c) of section 45-I, including the laying down of the conditions subject to which banks and other financial institutions shall participate in such fund transfers, the manner of such fund transfers and the rights and obligations of the participants in such fund transfers;"

Sd/—

SUBHASH C. JAIN,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.



सत्यमेव जयते

# The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/75/2000/Act-22/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 9th June, 2000/Jyaishta 19, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 9th June, 2000, and is hereby published for general information:—

#### THE MAJOR PORT TRUSTS (AMENDMENT) ACT, 2000

(Act No. 22 of 2000)

(9th June, 2000.)

An Act further to amend the Major Port Trusts Act, 1963.

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Major Port Trusts (Amendment) Act, 2000.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 42 of the Major Port Trusts Act, 1963 (hereinafter referred to as the principal Act),—

(a) in sub-section (1),—

(i) in clause (d), the word "and" occurring at the end shall be omitted;

(ii) in clause (e), the word "and" shall be inserted at the end and after the clause as so amended, the following clause shall be inserted, namely:—

"(f) developing and providing, subject to the previous approval of the Central Government, infrastructure facilities for ports.";

Short title and  
commencement.

Amendment of  
section 42.

38 of 1963.

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

"(3A) Without prejudice to the provisions of sub-section (3), a Board may, with the previous approval of the Central Government, enter into any agreement or other arrangement (whether by way of partnership, joint venture or in any other manner) with, any body corporate or any other person to perform any of the services and functions assigned to the Board under this Act on such terms and conditions as may be agreed upon."

Amendment of  
section 88.

3. In section 83 of the principal Act, in sub-section (2), after clause (c) and before the *Explanation*, the following clauses shall be inserted, namely:—

"(d) be invested, in any manner, in an arrangement referred to in sub-section (3A) of section 42;

(e) be invested, in any manner, in the development or management of any port including a port other than a major port on such terms and conditions as may be approved by the Central Government."

Sd/-

SUBHASH C. JAIN,  
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.



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## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/78/2000/Act-24/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 11th August, 2000/Sravana 20, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 11th August, 2000, and is hereby published for general information:—

#### THE INDIAN COMPANIES (FOREIGN INTERESTS) AND THE COMPANIES (TEMPORARY RESTRICTIONS ON DIVIDENDS) REPEAL ACT, 2000

(Act No. 24 of 2000)

(11th August, 2000.)

An Act to repeal the Indian Companies (Foreign Interests) Act, 1918 and the Companies (Temporary Restrictions on Dividends) Act, 1974.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Indian Companies (Foreign Interests) and the Companies (Temporary Restrictions on Dividends) Repeal Act, 2000.

Short title.

2. The Indian Companies (Foreign Interests) Act, 1918 and the Companies (Temporary Restrictions on Dividends) Act, 1974 are hereby repealed.

Repeal of Acts  
20 of 1918 and  
35 of 1974.

Sd/—

SUBHASH C. JAIN,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.





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##### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/79/2000/Act-25/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 11th August, 2000/Sravana 20, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 11th August, 2000, and is hereby published for general information:—

#### THE COTTON CLOTH (REPEAL) ACT, 2000

(Act No. 25 of 2000)

(11th August, 2000.)

An Act to repeal the Cotton Cloth Act, 1918.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Cotton Cloth (Repeal) Act, 2000.
2. The Cotton Cloth Act, 1918 is hereby repealed.

Short title

Repeal of Act  
23 of 1918.

Sd/—

SUBHASH C. JAIN,

Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

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Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/80/2000/Act-26/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 11th August, 2000/Savana 20, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 11th August, 2000, and is hereby published for general information:—

THE IRON AND STEEL COMPANIES (AMALGAMATION AND  
TAKEOVER LAWS) REPEAL ACT, 2000

(Act No. 26 of 2000)

(11th August, 2000.)

An Act to repeal the Iron and Steel Companies Amalgamation Act, 1952 and the Indian Iron and Steel Company (Taking Over of Management) Act, 1972.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Iron and Steel Companies (Amalgamation and Takeover Laws) Repeal Act, 2000.

Short title.

2. The Iron and Steel Companies Amalgamation Act, 1952 and the Indian Iron and Steel Company (Taking Over of Management) Act, 1972 are hereby repealed.

Repeal of Acts  
79 of 1952 and  
50 of 1972.

Sd/—

SUBHASH C. JAIN,

Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

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## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/81/2000/Act-27/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

*New Delhi, the 14th August, 2000/Sravana 23, 1922 (Saka)*

The following Act of Parliament received the assent of the President on the 11th August, 2000, and is hereby published for general information:—

#### THE MOTOR VEHICLES (AMENDMENT) ACT, 2000

(ACT No. 27 OF 2000)

(11th August, 2000.)

An Act further to amend the Motor Vehicles Act, 1988.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Motor Vehicles (Amendment) Act, 2000.

Short title.

59 of 1988.

2. For section 52 of the Motor Vehicles Act, 1988 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

Substitution of new section for section 52.

Alteration in  
motor vehicle.

'52. (1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are at variance with those originally specified by the manufacturer:

Provided that where the owner of a motor vehicle makes modification of the engine, or any part thereof, of a vehicle for facilitating its operation by different type of fuel or source of energy including battery, compressed natural gas, solar power, liquid petroleum gas or any other fuel or source of energy, by fitment of a conversion kit, such modification shall be carried out subject to such conditions as may be prescribed:

Provided further that the Central Government may prescribe specifications, conditions for approval, retrofitment and other related matters for such conversion kits:

Provided also that the Central Government may grant exemption for alteration of vehicles in a manner other than specified above, for any specific purpose.

(2) Notwithstanding anything contained in sub-section (1), a State Government may, by notification in the Official Gazette, authorise, subject to such conditions as may be specified in the notification, and permit any person owning not less than ten transport vehicles to alter any vehicle owned by him so as to replace the engine thereof with engine of the same make and type, without the approval of registering authority.

(3) Where any alteration has been made in motor vehicle without the approval of registering authority or by reason of replacement of its engine without such approval under sub-section (2), the owner of the vehicle shall, within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of registration may be entered therein.

(4) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

(5) Subject to the provisions made under sub-sections (1), (2), (3) and (4), no person holding a vehicle under a hire-purchase agreement shall make any alteration to the vehicle except with the written consent of the registered owner.

*Explanation.*—For the purposes of this section, "alteration" means a change in the structure of a vehicle which results in a change in its basic feature.

Amendment of  
section 58.

3. In section 58 of the principal Act, sub-section (4) shall be omitted.

Amendment of  
section 66.

4. In section 66 of the principal Act, in sub-section (3), clause (h) shall be omitted.



5. After section 217 of the principal Act, the following section shall be inserted, namely:—

Insertion of  
new section  
217A.

"217A. Notwithstanding the repeal by sub-section (1) of section 217 of the enactments referred to in that sub-section, any certificate of fitness or registration or licence or permit issued or granted under the said enactments may be renewed under this Act."

Renewal of  
permits, driving  
licences and  
registration  
granted under  
the Motor  
Vehicles Act,  
1939.

Sd/—

SUBHASH C. JAIN,  
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.

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GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/82/2000/Act-31/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

*New Delhi, the 25th August, 2000/Bhadra 3, 1922 (Saka)*

The following Act of Parliament received the assent of the President on the 25th August, 2000, and is hereby published for general information:—

#### THE ARMY AND AIR FORCE (DISPOSAL OF PRIVATE PROPERTY) AMENDMENT ACT, 2000

(Act No. 31 of 2000)

(25th August, 2000.)

An Act further to amend the Army and Air Force (Disposal of Private Property) Act, 1950.

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Army and Air Force (Disposal of Private Property) Amendment Act, 2000.

Short title.

Amendment of  
section 7.

2. In section 7 of the Army and Air Force (Disposal of Private Property) Act, 1950 (hereinafter referred to as the principal Act), in sub-sections (1) and (3), for the words and figures "the Administrator General's Act, 1913", the words and figures "the Administrators-General Act, 1963" shall be substituted.

40 of 1950,

3 of 1913.  
45 of 1963.

Amendment of  
section 10.

3. In section 10 of the principal Act, for the words "ten thousand", the words "two lakhs" shall be substituted.

Amendment of  
section 14.

4. In section 14 of the principal Act, for the words and figures "the Indian Lunacy Act, 1912", the words and figures "the Mental Health Act, 1987" shall be substituted.

4 of 1912.  
14 of 1987.

Sd/-

SUBHASH C. JAIN,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.

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##### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/83/2000/Act-32/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

*New Delhi, the 25th August, 2000/Bhadra 3, 1922 (Saka)*

The following Act of Parliament received the assent of the President on the 25th August, 2000, and is hereby published for general information:—

#### THE INDIAN POWER ALCOHOL (REPEAL) ACT, 2000

(Act No. 32 of 2000)

(25th August, 2000.)

An Act to repeal the Indian Power Alcohol Act, 1948.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Indian Power Alcohol (Repeal) Act, 2000.
2. The Indian Power Alcohol Act, 1948 is hereby repealed.

Short title.

Repeal of Act  
22 of 1948.

Sd/—

SUBHASH C. JAIN,  
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.

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## PART - VI

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#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/84/2000/Act-33/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 25th August, 2000/Bhadra 3, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 25th August, 2000, and is hereby published for general information:—

#### THE ALL-INDIA INSTITUTE OF MEDICAL SCIENCES (AMENDMENT) ACT, 2000

(ACT No. 33 OF 2000)

(25th August, 2000.)

An Act further to amend the All-India Institute of Medical Sciences Act, 1956.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the All-India Institute of Medical Sciences (Amendment) Act, 2000.

Short title.

25 of 1956.

2. In the All-India Institute of Medical Sciences Act, 1956, in section 6, in the proviso to sub-section (1), after the words "as soon as he", the words "becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States or" shall be inserted.

Amendment of section 6.

Sd/—

SUBHASH C. JAIN,

Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

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## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/85/2000/Act-34/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 28th August, 2000/Bhadra 6, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 26th August, 2000, and is hereby published for general information:—

#### THE CHEMICAL WEAPONS CONVENTION ACT, 2000

(ACT No. 34 OF 2000)

(26th August, 2000.)

An Act to give effect to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and to provide for matters connected therewith or incidental thereto.

WHEREAS a Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction was signed on behalf of the Government of India at Paris on the 14th day of January, 1993;

AND WHEREAS India, having ratified the said Convention, has to make provisions for giving effect thereto and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

#### CHAPTER I

##### PRELIMINARY

1. (1) This Act may be called the Chemical Weapons Convention Act, 2000.

(2) It extends to the whole of India, and it shall apply to—

(a) citizens of India outside India; and

(b) associates, branches or subsidiaries, outside India of companies or bodies corporate, registered or incorporated in India.

Short title, extent,  
application and  
commencement.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

## Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Article" means an Article of the Convention;

(b) "Chemical Weapons" means,—

(i) the Toxic Chemicals and their precursors, except where intended for purposes not prohibited under the Convention, as long as the types and quantities are consistent with such purposes;

(ii) the munitions and devices, specifically designed to cause death or other harm through the toxic properties of those Toxic Chemicals specified in sub-clause (i), which would be released as a result of the employment of such munitions and devices;

(iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in sub-clause (ii),

together or separately;

(c) "Convention" means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction signed on behalf of the Government of India at Paris on the 14th day of January, 1993;

(d) "enforcement officer" means a person appointed as such by the Central Government under sub-section (1) of section 9 or by the State Government under sub-section (2) of that section;

(e) "goods", in relation to Toxic Chemicals, Precursors or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine, means any material, commodity, article or compound consisting of such Toxic Chemicals, Precursors or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine and includes materials, commodities, articles, compounds or apparatus used in the production, processing or storing of Toxic Chemicals, Precursors or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine;

(f) "industry" includes a Facility;

(g) "Inspector" means an individual designated by the Technical Secretariat, according to the procedures as set forth in Part II, Section A, of the Verification Annex to the Convention, to carry out an inspection or visit in accordance with the Convention;

(h) "National Authority" means the National Authority for the Chemical Weapons Convention established under sub-section (1) of section 6;

(i) "Organisation" means the Organisation for the prohibition of Chemical Weapons established pursuant to Article VIII;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "purposes not prohibited under the Convention" means—

(i) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

(ii) protective purposes namely those purposes directly related to protection against Toxic Chemicals and to protection against Chemical Weapons;

(iii) military purposes not connected with the use of Chemical Weapons

and not dependant on the use of the Toxic Properties of Chemicals as a method of warfare; and

(iv) law enforcement including domestic riot control purposes;

(j) "State Party" means a signatory or acceding State to the Convention whose instrument of ratification or accession has been deposited with the Depository of the Convention;

(m) words and expressions used in this Act and not defined but defined in the Convention, or the Code of Criminal Procedure, 1973, shall have the meanings respectively assigned to them in that Convention or Code:

2 of 1974.

3. (1) Notwithstanding anything to the contrary contained in any other law, the provisions of the Convention set out in the Schedule to this Act shall have the force of law in India.

Application of the Convention.

(2) The Central Government may, from time to time and by notification in the Official Gazette, amend the Schedule in conformity with any amendments, duly made and adopted, of the provisions of the said Convention set out therein.

4. Where the Central Government considers any inspection of a Chemical Weapons Production Facility in India under this Act to be against the interest of national security or economic interests of India, it may deny the request for such inspection.

Power of Central Government to deny the request for inspection.

5. The Central Government may, by notification in the Official Gazette, declare that this Act shall cease to be in force in case the Government of India withdraws from the Convention in accordance with the provisions of Article XVI, and on such declaration this Act shall cease to be in force, but its expiry under the operation of this Section shall not affect—

Power of Central Government to declare Cessation of the Act.

(a) the previous operation of, or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule, or

(b) any right privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act, or

(d) any investigation, legal proceeding or remedy in respect of any such right privilege, obligation, liability penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

## CHAPTER II

### ESTABLISHMENT OF THE NATIONAL AUTHORITY AND ITS POWERS AND FUNCTIONS

6. (1) For the purposes of this Act, the Central Government shall establish, by notification in the Official Gazette, an Authority to be known as the National Authority for implementing the provisions of the Convention which shall consist of a Chairperson and such number of Directors as may be appointed by the Central Government.

Establishment of National Authority.

(2) The Central Government may appoint officers and such other employees to the National Authority as it thinks fit for the purposes of this Act.

(3) The salary and allowances payable to, and other terms and conditions of service of, the Chairperson and the Directors shall be such as may be prescribed.

(4) The salary and allowances payable to, and other terms and conditions of service of, officers and other employees of the National Authority shall be such as may be prescribed.



Powers and  
functions of  
National  
Authority.

(5) In the exercise of its powers and performance of its functions under this Act, the National Authority shall be subject to the control of the Central Government.

7. (1) Subject to the provisions of this Act,—

(a) it shall be the general duty of the National Authority to fulfil, on behalf of the Government of India, the obligations under the Convention;

(b) it shall be incumbent on the National Authority to act as the national focal point for effective liaison with the Organisation and other States Parties on matters relating to the Convention.

(2) Subject to the provisions of sub-section (1), the functions of the National Authority shall be to—

(a) interact with the Organisation and other States Parties for the purpose of fulfilling the obligations of the Government of India under the Convention;

(b) monitor compliance with the provisions of the Convention;

(c) regulate and monitor the development, production, processing, consumption, transfer or use of Toxic Chemicals or Precursors as specified in the Convention;

(d) make request to, or to receive request from, a State Party for assistance and protection under Article X, against the use or threat of use of Chemical Weapons;

(e) manage routine inspection or Challenge Inspection or managing investigation, in case a complaint of use of Chemical Weapons or riot control agents as a method of warfare is received from the Organisation;

(f) conduct inspections for the purposes of this Act;

(g) interact with the Organisation in respect of acceptance of request of India for Challenge Inspection or to counter any frivolous or defamatory request made by any State Party against India to the Organisation;

(h) scrutinise and accept list of Inspectors and to verify the Approved Equipment brought by an Inspection Team on to the Inspection Site;

(i) provide escort to the Inspection Team and the Observer within the territory of India;

(j) identify and oversee the closure and destruction of Chemical Weapons, Chemical Weapons Production Facilities, Old Chemical Weapons or Abandoned Chemical Weapons;

(k) negotiate Managed Access during the Challenge Inspection;

(l) ensure decontamination of Approved Equipment after completion of an Inspection;

(m) advise Central Government for laying down safeguards for transportation, sampling or storage of Chemical Weapons and fixation of standards for emission or discharge of environmental pollutants arising out of the destruction of Chemical Weapons, Old Chemical Weapons, Abandoned Chemical Weapons or Chemical Weapons Production Facility;

(n) ensure data base confidentiality and maintain secrecy of confidential information and technology collected or received by the National Authority under this Act;

(o) facilitate exchange of scientific and technological information relating to developments in chemicals amongst the States Parties;

(p) call for such information from any person which the National Authority has reasonable cause to believe that such information may be required for complying with the provisions of the Convention;

(q) approve and declare, on behalf of the Government of India, a single small-scale facility for production of Toxic Chemicals listed in Schedule 1 in the Annex on Chemicals to the Convention for purposes not prohibited under the Convention;

(r) provide training to enforcement officers;

(s) ensure protection of environment, health and safety of the people during transportation, sampling, storage or destruction of Chemical Weapons, Chemical Weapons Production Facilities, Old Chemical Weapons or Abandoned Chemical Weapons;

(t) co-ordinate exchange of scientific and technological information among laboratories handling Toxic Chemicals or Precursors;

(u) determine, from time to time, the quantity limit that a person at any time may produce, otherwise acquire, retain, transfer or use any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention, any Discrete Organic Chemical including Discrete Organic Chemical containing elements of phosphorous, sulphur or fluorine for purposes not prohibited under the Convention;

(v) such other functions as may be prescribed.

8. The National Authority shall prepare such initial, annual and other periodical declarations regarding Toxic Chemicals or Precursors listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention, Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine, Chemical Weapons, Old Chemical Weapons, Abandoned Chemical Weapons, riot control agents, Chemical Weapons Production Facilities, past transfers of Chemical Weapons or their production equipments or any other declaration required to be made under the Convention and shall submit such declarations to the Organisation at such time as are specified under the Convention.

National Authority to submit initial, annual and other periodical declarations to Organisation.

9. (1) The Central Government may, by notification in the Official Gazette, appoint such of the officers of the National Authority as it thinks fit to be enforcement officers for the purposes of this Act.

Appointment of enforcement officers.

(2) The State Government may, as and when so directed by the Central Government and by notification in the Official Gazette, appoint such of its officers of gazetted rank as it thinks fit to be enforcement officers for the purposes of this Act and assign to them such local limits as it may think fit.

(3) Every officer appointed as enforcement officer under sub-section (1) or under sub-section (2) shall be furnished by the Central Government or by the State Government, as the case may be, with a certificate of appointment as an enforcement officer and the certificate shall, on demand, be produced by such enforcement officer.

10. Notwithstanding anything contained in any other law but subject to the provisions of this Act, the National Authority may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or authority and such person, officer or authority shall be bound to comply with such directions.

Power of National Authority to issue directions.

*Explanation.*—For the avoidance of doubts, it is hereby declared that the power to issue direction under this section includes the power to direct—

(a) the closure, prohibition or regulation of any company, firm or industry engaged in the development, production, processing, consumption or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on

Chemicals to the Convention or, the production of any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine; or

(b) the stoppage or regulation of the supply of electricity or water or any other service to such company, firm or industry.

Power of Central Government to constitute Committee.

11. The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute a Committee by such name as may be specified in the order for the purpose of overseeing the functions of the National Authority and exercising and performing such of the powers and functions of the Central Government under this Act (except the power to make rules under section 56) as may be specified in the order and subject to the supervision and control of the Central Government and the provisions of such order, such Committee may exercise the powers or perform the functions so specified in the order as if such Committee had been empowered by this Act to exercise those powers or perform those functions.

Power of National Authority to call for information, etc.

12. (1) Notwithstanding anything contained in any other law for the time being in force, the National Authority may, by general or special order, call upon a person, to furnish to that Authority periodically or as and when required any information, declaration or return concerning Toxic Chemicals or Precursors listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention, Chemical Weapons, Old Chemical Weapons, Abandoned Chemical Weapons, Chemical Weapons Production Facilities, riot control agents, single small-scale facility or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine with such particulars as may be specified by the National Authority.

(2) No person shall, when complying with any requisition made under sub-section (1), give any information or furnish any declaration, return or statement which he knows, or has reasonable cause to believe to be false or not true in any material particular.

### CHAPTER III

#### PROHIBITION AND REGULATION OF CHEMICAL WEAPONS AND TOXIC CHEMICALS

Prohibition to develop, produce, acquire, etc., Chemical Weapons.

13. (1) No person shall—

(a) develop, produce, otherwise acquire, stockpile, retain or use Chemical Weapons, or transfer, directly or indirectly, any Chemical Weapons to any person;

(b) use riot control agents as a method of warfare;

(c) engage in any military preparations to use Chemical Weapons;

(d) assist, encourage or induce, in any manner, any person to engage in—

(i) the use of any riot control agent as a method of warfare;

(ii) any other activity prohibited to a State Party under the Convention.

(2) The prohibition contained in sub-section (1) shall not apply to the retention or possession of Chemical Weapons, which are permitted by the Convention, pending destruction of such Weapons.

Knowledge about Old or Abandoned Chemical Weapons to be informed to National Authority.

14. Any person having knowledge about the possession or location of Old Chemical Weapons or Abandoned Chemical Weapons shall inform the National Authority of such possession and the precise location of such Old Chemical Weapons or Abandoned Chemical Weapons within seven days from the commencement of this Act:

Provided that where the knowledge about the possession or location of Old Chemical Weapons or Abandoned Chemical Weapons is obtained after the commencement of this Act, an information about knowledge of such possession or location shall be given to the National Authority within seven days from the occurrence of such knowledge.

## 15. No person shall—

(a) produce, acquire, retain or use Toxic Chemicals or Precursors listed in Schedule 1 in the Annex on Chemicals to the Convention, outside the territories of States Parties, and shall not transfer such Chemicals or Precursors outside the territory of India except to another State Party;

(b) produce, acquire, retain, transfer or use Toxic Chemicals or Precursors listed in Schedule 1 in the Annex on Chemicals to the Convention without permission from the National Authority and unless—

(i) the Toxic Chemicals or Precursors listed in Schedule 1 in the Annex on Chemicals to the Convention are for the purposes to be applied to research, medical, pharmaceutical or protective purposes; and

(ii) the types of Toxic Chemicals or Precursors are strictly limited to those that can be justified with reference to the purposes specified in sub-clause (i) and the quantities of such Toxic Chemicals or Precursors for such purposes at any time do not exceed the limits fixed by the National Authority;

(c) transfer the Toxic Chemicals or Precursors listed in Schedule 1 in the Annex on Chemicals to the Convention to another State Party outside India except—

(i) for the purposes specified in sub-clause (i) of clause (b); and

(ii) in accordance with the procedure set out in Part VI of the Verification Annex to the Convention:

Provided that no Toxic Chemicals or Precursors referred to in clause (c) shall be re-transferred to any third State.

16. No person shall, three years after the 29th day of April, 1997, transfer to or receive from any person, who is not a citizen of a State Party, any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals to the Convention.

17. No person shall export from, or import into, India a Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention except in accordance with the provisions of the Export and Import Policy determined by the Central Government from time to time under the Foreign Trade (Development and Regulation) Act, 1992 and the Orders issued thereunder.

Prohibition to develop, produce, acquire, etc., Toxic Chemical or Precursor.

Restriction on transfer of Toxic Chemical or Precursor listed in Schedule 2.

Export or import to be made in accordance with Export and Import Policy.

22 of 1992.

## CHAPTER IV

## REGISTRATION OF PERSONS AS PRODUCERS, USERS, ETC.

18. (1) Every person who is engaged in the production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or, engaged in the production of any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine shall make, within thirty days from the commencement of this Act, an application for registration of his name, as a producer, processor, acquirer, consumer, transferor, importer, exporter or user of any Toxic Chemical or Precursor or, as the case may be, as a producer of any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine, to such registration authority as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) No person, who after the commencement of this Act, desires to produce, process, acquire, consume, transfer, import, export or use any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or, desires to produce any Discrete Organic Chemical including Discrete Organic Chemicals containing

Registration of persons engaged in production, etc., of any Toxic Chemical or Precursor.



elements of phosphorous, sulphur or fluorine, shall commence business unless such person has applied to the registration authority specified under sub-section (1) for registration of his name as a producer, processor, acquirer, consumer, transferor, importer, exporter or user of any Toxic Chemical or Precursor or, as the case may be, as a producer of any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine.

(3) The form of application to be made to the registration authority under sub-section (1) or sub-section (2), the particulars to be contained in such application form, the manner in which such application shall be made, the fee payable on such application, the form of certificate of registration, the procedure to be followed in granting or cancelling certificate of registration shall be such as may be prescribed.

(4) On receipt of the application referred to in sub-section (1) or sub-section (2), the registration authority shall, if the application is in the prescribed form, register the name of the applicant and grant him a certificate of registration.

(5) The certificate of registration granted in pursuance of this section shall be valid for a period specified therein and may be renewed from time to time for such further period and on payment of such fee as may be prescribed.

## CHAPTER V

### INSPECTION, SEARCH, SEIZURE AND FORFEITURE

Power of Inspector to inspect any person or place.

19. (1) An Inspector may inspect—

(a) any person who is engaged in—

(i) the production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention; or

(ii) the production of any Discrete Organic Chemical including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine;

(b) any place where any Chemical Weapon, Old Chemical Weapon or Abandoned Chemical Weapon is located or Chemical Weapon Production Facility exists,

for the purposes specified in the Verification Annex to the Convention.

(2) An Inspection Team may undertake a Challenge Inspection of any Facility or location pursuant to Article IX and such inspection shall be undertaken in accordance with the provisions of the Verification Annex to the Convention.

(3) The Inspection Team may, while carrying out a Challenge Inspection, be accompanied by an Observer to observe the conduct of the Challenge Inspection.

(4) An enforcement officer shall accompany the Inspector or Inspection Team to observe all verification activities carried out by the Inspector or Inspection Team and to provide the Inspector or Inspection Team, during the inspection, with such clarifications in connection with an ambiguity that may arise during an inspection as may be necessary to remove such ambiguity.

(5) Every Inspector or Inspection Team shall have—

(a) the right to interview any Facility personnel in the presence of enforcement officer for the purpose of establishing relevant facts;

(b) the right to request clarifications in connection with ambiguities that may arise during inspection;

(c) the right to demand production of such documentation and records which are relevant and necessary for the purpose of inspection;

(d) the right to take photographs of an object or a building located within the Inspection Site if question relating to that object or building is not resolved;

(e) the right to draw samples, perform on site analysis of such samples; and

(f) such other rights as are provided under the Convention.

(6) An Inspector or Inspection Team shall, during the conduct of verification activities or Challenge Inspection, enjoy the privileges and immunities referred to in Part II of the Verification Annex to the Convention.

(7) No sample drawn under clause (e) of sub-section (5) by an Inspector or Inspection Team shall be sent for analysis in any laboratory situated outside the territory of India.

20. (1) Any enforcement officer shall have the right to enter with such assistance as he considers necessary, any building or place for the purpose of—

Enforcement officer to enter into any place for examining and testing facility or to conduct search.

(a) verifying the correctness of any information, declaration or return furnished under sub-section (1) of section 12;

(b) performing any of the functions of the National Authority entrusted to him;

(c) determining whether any provisions of this Act or the rules made thereunder or any direction given under this Act is being complied with by any person engaged in the production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or engaged in the production of any Discrete Organic Chemical including Discrete Organic Chemical containing elements of phosphorous, sulphur or fluorine;

(d) examining or testing any facility, record, document or any other material object, as the case may be, or conducting a search of any place or person;

(e) conducting a search where a warrant under sub-section (1) of section 22 is addressed to such enforcement officer or he is so authorised under sub-section (2) of that section.

(2) Any enforcement officer shall have a right to accompany the Inspector or Inspection Team as a representative of India during inspection in India.

21. If any person wilfully—

Certain acts to constitute an offence.

(a) refuses without reasonable excuse to comply with the request made by the Inspector or Inspection Team for the purpose of facilitating the conduct of that inspection in accordance with the Verification Annex to the Convention;

(b) delays or obstructs any member of the Inspection Team, Inspector, enforcement officer or the Observer in the conduct of inspection;

(c) removes or tampers with any on-site instrument or Approved Equipment installed by the enforcement officer, Inspector or Inspection Team with the intention of adversely affecting the operation of such instrument or Equipment,

he shall be guilty of an offence punishable under this Act.

22. (1) A Metropolitan Magistrate or a Judicial Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter VI or for the search, whether by day or by night, of any industry, building, conveyance or place in which he has reason to believe that any goods in relation to which an offence punishable under Chapter VI has been committed or any document or other goods which may furnish evidence of the commission of such offence is kept or concealed.

Power to issue warrant and authorisation.

(2) Any enforcement officer or such other officer of the National Authority as is empowered in this behalf by general or special order by the Central Government or any such officer of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any person has committed an offence punishable under Chapter VI or any goods in relation to which an offence punishable under Chapter VI has been committed or any document or other goods which may furnish evidence of the commission of such offence has been kept or concealed in any industry, building, conveyance or place, may authorise any officer subordinate to him to arrest such person or search an industry or a building, conveyance or place, whether by day or by night, or himself arrest a person or search an industry or a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or such subordinate officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 23.

Power of entry,  
search, seizure  
and arrest without  
warrant or  
authorisation.

23. (1) Any such subordinate officer to the enforcement officer as is authorised in this behalf by general or special order by the Central Government or any such subordinate officer to the enforcement officer as is authorised in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing, that any goods in relation to which an offence punishable under Chapter VI has been committed or any document or goods which may furnish evidence of the commission of such offence is kept or concealed in any industry, building, conveyance or place, may, between sunrise and sunset,—

(a) enter into and search any such industry, building, conveyance or place;  
(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such Chemical Weapons, Chemical Weapons Production Facilities, riot control agents, Old Chemical Weapons, Abandoned Chemical Weapons, Toxic Chemicals or Precursors or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine, all goods and any conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other goods which he has reason to believe may furnish evidence of the commission of any offence punishable under Chapter VI relating to such Chemical Weapons, Chemical Weapons Production Facilities, riot control agents, Old Chemical Weapons, Abandoned Chemical Weapons, Toxic Chemicals, Precursors or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine; and

(d) detain and search, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter VI relating to such Chemical Weapons, Chemical Weapons Production Facilities, riot control agents, Old Chemical Weapons, Abandoned Chemical Weapons, Toxic Chemicals or Precursors or Discrete Organic Chemicals including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine:

Provided that if such subordinate officer has reason to believe that search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such industry, building, conveyance or place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate superior officer.

24. Any subordinate officer to the enforcement officer as is authorised in section 23 may—

Power of seizure and arrest in public places.

(a) seize, in any public place or in transit, any goods, in relation to which he has reason to believe an offence punishable under Chapter VI has been committed, and, along with such goods, any conveyance liable to confiscation under this Act, and any document or goods which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter VI relating to such goods;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter VI, and, if such person has any Toxic Chemical or Precursor or any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

*Explanation.*—For the purposes of this section, the expression “public place” includes any public conveyance, shop, hotel or other place intended for use by, or accessible to, the public.

25. (1) Where it is not practicable to seize any goods which are liable to confiscation under this Act, any officer authorised under section 23 may serve on the owner or person in possession of the goods, an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer.

Procedure where seizure of goods liable to confiscation not possible.

(2) For effecting seizure and confiscation, the owner, the plant operator and other officials of the facility shall provide all assistance with regard to safety in handling of goods.

26. Any subordinate officer authorised under section 23 may, if he has reason to suspect that any conveyance is, or is likely to be, used for the transport of any goods in respect of which he suspects that any provision of this Act has been, or is being, or is likely to be, contravened at any time, stop such conveyance, or in the case of an aircraft compel it to land and—

Power to stop and search conveyance.

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods in the conveyance;

(c) if it becomes necessary to stop the conveyance, he may use all lawful means for stopping it.

27. (1) When any subordinate officer authorised under section 23 or any subordinate officer exercising power in pursuance of sub-section (3) of section 22 is about to search any person under the provisions of section 22 or section 23 or section 24, he shall, if such person so requires, take such person without unnecessary delay to the nearest enforcement officer or the officer authorising such search or the nearest Magistrate.

Conditions under which search of persons be conducted.

(2) If such requisition is made, the officer may detain the person until he can bring him before the officer or the Magistrate referred to in sub-section (1).

(3) The officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

28. The provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.

Provisions of Act 2 of 1974 to apply to arrests, searches and seizures.



Disposal of  
persons arrested  
and goods seized.

29. (1) Any officer arresting a person under section 22 or section 23 or section 24 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and goods seized under warrant issued under sub-section (1) of section 22 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and goods seized under sub-section (2) of section 22 or section 23 or section 24 shall be forwarded without unnecessary delay to—

(a) the officer in charge of the nearest police station; or

(b) the officer empowered under section 30.

(4) The authority or officer to whom any person or goods is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or goods.

Power to invest  
officers of the  
National  
Authority, etc.,  
with powers of an  
officer in charge  
of a police  
station.

30. (1) The Central Government may, after consultation with the State Government, by notification published in the Official Gazette, invest any officer of the National Authority with the powers of an officer in charge of a police station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the Official Gazette, invest any of officer of gazetted rank or any class of such officers with the powers of an officer in charge of a police station for the investigation of the offences under this Act.

Police to take  
charge of goods  
seized and  
delivered.

31. An officer in charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all goods seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such goods to the police station or who may be deputed for the purpose, to affix his seal to such goods or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer in charge of the police station.

Report of arrest  
and seizure.

32. Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate superior officer.

Liability of Toxic  
Chemicals,  
Precursors and  
conveyance to  
confiscation.

33. (1) Whenever any offence punishable under Chapter VI has been committed, the goods or in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any Toxic Chemical or Precursor lawfully produced, imported into India, transported, used, purchased or sold along with, or in addition to, any goods which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any goods liable to confiscation under sub-section (1), is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any conveyance used in carrying any goods liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the conveyance proves that it was used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance and that each of them had taken all reasonable precautions against such use.

Confiscation of  
Goods used for  
concealing Toxic  
Chemicals or  
Precursors.

34. Any Goods used for concealing any goods which is liable to confiscation under this Act shall also be liable to confiscation.

*Explanation.*—In this section, "Goods" includes conveyance as a means of transport.

Confiscation of  
sale proceeds of  
goods.

35. Where any goods is sold by a person having knowledge or reason to believe that the goods is liable to confiscation under this Act, the sale proceeds thereof shall also be liable to confiscation.

36. (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any goods seized under this Act is liable to confiscation and, if it decides that the goods is so liable, it may order confiscation accordingly.

Procedure in making confiscation.

(2) Where any goods seized under this Act appears to be liable to confiscation under section 33 or section 34 or section 35, but the person who committed the offence therewith is not known or cannot be found, the court may inquiry into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of any goods shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.

37. Any subordinate officer authorised under section 23 may, during the course of any inquiry in connection with the contravention of any provision of this Act,—

Power to call for information, etc.

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made or direction issued thereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.

38. No enforcement officer, subordinate officer to enforcement officer or officer of the National Authority or the State Government or officer subordinate to such officer as is mentioned in sub-section (2) of section 22 acting in exercise of powers vested in him under any provision of this Act or any such order made thereunder shall be compelled to say when he got any information as to the commission of any offence.

Information as to commission of offences.

## CHAPTER VI

### OFFENCES AND PENALTIES

39. Whoever—

Punishment for failure to register.

(a) before the commencement of this Act had been engaged in development, production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or engaged in the production of any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine and continues to be, after such commencement, so engaged; or

(b) after the commencement of this Act produces, processes, acquires, consumes, transfers, imports, exports or uses any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or produces any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine,

without complying with the provisions of sub-section (1) or, as the case may be, sub-section (2) of section 18 shall, unless his name is registered in accordance with the provisions of that section, be punishable with fine which may extend to one lakh rupees, and in the case of continuing default, with a further fine which may extend to one lakh rupees every day during which such default continues after conviction for the first default or with imprisonment for a term which may extend to three years, or with both.

Punishment for  
contravention in  
relation to  
development,  
production, etc.,  
of Chemical  
Weapons or riot  
control agents,  
etc.

40. Whoever, in contravention of any provision of this Act, develops, produces, otherwise acquires, stockpiles, retains or uses Chemical Weapons, transfers, directly or indirectly, any Chemical Weapon to any person, uses any riot control agent as a method of warfare, engages in any military preparations to use Chemical Weapons, assists, encourages or induces in any manner any person to engage in the use of any riot control agent as a method of warfare or any other activity prohibited to a State Party under the Convention, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

Punishment for  
contravention in  
relation to Toxic  
Chemicals, etc.,  
listed in  
Schedule 1.

41. Whoever, in contravention of any provision of this Act, produces, acquires, retains, transfers or uses any Toxic Chemical or Precursor listed in Schedule 1 in the Annex on Chemicals to the Convention for the purposes prohibited to a State Party under the Convention or transfers any Toxic Chemical or Precursor listed in Schedule 1 in the Annex on Chemicals to the Convention outside India, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

Punishment for  
contravention in  
relation to  
transfer of Toxic  
Chemicals, etc.,  
listed in Schedule  
2.

42. Whoever, in contravention of any provision of this Act transfers to or receives from any person who is not a citizen of a State Party any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals to the Convention, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

Punishment for  
contravention in  
relation to export  
or import of Toxic  
Chemicals, etc.

43. Whoever, in contravention of any provision of this Act, exports from or imports into India any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

Punishment for  
contravention in  
relation to  
disclosure of  
confidential  
information.

44. Whoever, in contravention of any provision of this Act, divulges any confidential information obtained by the National Authority from any declaration or return furnished or any statement made, information supplied to, or obtained by, an enforcement officer during the course of any inspection carried out under the provisions of this Act to any other person, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

Punishment for  
contravention in  
relation to denial  
of access.

45. Whoever does not comply with the obligations related to inspection activity under the Convention or delays or obstructs any Inspection Team or Inspector or enforcement officer or Observer in performance of his functions or wilfully removes or tampers with any installed on site instrument or any Approved Equipment shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

Punishment for  
contravention in  
relation to failure  
to furnish  
information,  
declaration or  
return.

46. Any person who being required by or under this Act to furnish any—

- (a) information;
- (b) declaration; or
- (c) return,

fails to furnish such information, declaration or return shall be punishable with fine which may extend to one lakh rupees, and in the case of continuing default, with a further fine which may extend to one lakh rupees for every day during which such default continues after conviction for the first such default, or with imprisonment for a term which may extend to three years, or with both.



2 of 1974.

47. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence punishable under section 46 shall be cognizable.

Offence punishable under section 46 to be cognizable.

48. (1) Where any offence under Chapter VI has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under Chapter VI has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner of the firm.

49. No court shall take cognizance of any offence punishable under this Act except with the previous sanction of the Central Government or the authority notified by the Central Government, in the Official Gazette, to be competent to sanction prosecution of the offences under this Act.

Prosecution of offences.

50. (1) Any person aggrieved by any direction of the National Authority issued under section 10 may prefer an appeal to the Central Government within such time as may be prescribed.

Appeals from the decision of the National Authority.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor.

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the direction appealed against and by such fee as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

51. Notwithstanding anything contained in this Act, the provisions of the Convention in so far as they relate to—

Provisions of Convention not to apply to certain mixtures.

(a) restriction or reporting;

(b) inspection; or

(c) declaration and verification,

shall not apply to any mixtures containing such concentration of any Chemicals specified in Schedule 2 or Schedule 3 in the Annex on Chemicals to the Convention as the Central Government may, by notification in the Official Gazette, specify.



## CHAPTER VII

## MISCELLANEOUS

Protection of  
action taken in  
good faith.

52. No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of the Central Government or of a State Government or the Chairperson, Directors, officers and other employees of the National Authority or any other person exercising any powers or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule or order made thereunder.

Power to  
delegate.

53. (1) The Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act (except the power to make rules under section 56) as it may deem necessary or expedient, to the National Authority or the Committee referred to in section 11.

(2) The State Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act, as it may deem necessary or expedient, to any authority or officer of that Government.

Officers to be  
public servants.

54. The Chairperson, Directors, officers and other employees of the National Authority or any other person exercising any powers or discharging any functions under this Act shall be deemed to be the public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Removal of  
difficulties.

55. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President.

Power to make  
rules.

56. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to, and other terms and conditions of service of, the Chairperson and the Directors under sub-section (3) of section 6, and the salary and allowances payable to and other terms and conditions of service of officers and other employees of the National Authority under sub-section (4) of that section;

(b) other functions of the National Authority that may be prescribed under clause (v) of sub-section (2) of section 7;

(c) the form of application, the particulars to be contained in the application form, the form of certificate of registration, the manner of making application, the amount of fee payable, the procedure to be followed in granting or cancelling certificate of registration under sub-section (3) of section 18 and the period for which a renewed certificate of registration may be issued and the amount of fee payable therefor under sub-section (5) of that section;

(d) the time within which appeal may be preferred under sub-section (1) of section 50;

(e) the form for making appeal and the fee to be accompanied therewith under sub-section (3) of section 50;

(f) the procedure for disposing of appeal under sub-section (4) of section 50;

(g) any other matter which is to be, or may be, prescribed.

(3) Every notification issued under sub-section (2) of section 3, any declaration made under section 5, every order made under section 55 and every rule made under section 56 shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, order or rule or both Houses agree that the notification, order or rule should not be issued or made, the notification, order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification, order or rule.

**THE SCHEDULE**

(See section 3)

**PROVISIONS OF THE CONVENTION WHICH SHALL HAVE THE FORCE OF LAW****ARTICLE 1****GENERAL OBLIGATIONS**

1. Each State Party to this Convention undertakes never under any circumstances:
  - (a) To develop, produce, otherwise acquire, stockpile or retain Chemical Weapons, or transfer, directly or indirectly, Chemical Weapons to anyone;
  - (b) To use Chemical Weapons;
  - (c) To engage in any military preparations to use Chemical Weapons;
  - (d) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.
2. Each State Party undertakes to destroy Chemical Weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention.
3. Each State Party undertakes to destroy all Chemical Weapons it abandoned on the territory of another State Party, in accordance with the provisions of this Convention.
4. Each State Party undertakes to destroy any Chemical Weapons production facilities it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention.
5. Each State Party undertakes not to use riot control agents as a method of warfare.

## ARTICLE II

## DEFINITIONS AND CRITERIA

For the purposes of this Convention:

1. "Chemical Weapons" means the following, together or separately:

(a) Toxic Chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes;

(b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in sub-paragraph (a), which would be released as a result of the employment of such munitions and devices;

(c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in sub-paragraph (b).

2. "Toxic Chemical" means: Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

(For the purpose of implementing this Convention, toxic chemicals which have been identified for the application of verification measures are listed in Schedules contained in the Annex on Chemicals.)

3. "Precursor" means: Any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multi-component chemical system.

(For the purpose of implementing this Convention, precursors which have been identified for the application of verification measures are listed in Schedules contained in the Annex on Chemicals.)

4. "Key Component of Binary or Multi-component Chemical Systems" (hereinafter referred to as "key component") means: The Precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multi-component system.

5. "Old chemical weapons" means:

(a) Chemical weapons which were produced before 1925; or

(b) Chemical weapons produced in the period between 1925 and 1946 that have deteriorated to such extent that they can no longer be used as chemical weapons.

6. "Abandoned Chemical Weapons" means: Chemical weapons, including old chemical weapons, abandoned by a State after 1 January 1925 on the territory of another State without the consent of the latter.

7. "Riot Control Agent" means: Any chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.



## 8. "Chemical Weapons Production Facility":

(a) Means any equipment, as well as any building housing such equipment, that was designed, constructed or used at any time since 1 January 1946:

(i) As part of the stage in the production of chemicals (final technological stage) where the material flows would contain, when the equipment is in operation:

(1) Any chemical listed in Schedule I in the Annex on Chemicals;

or

(2) Any other chemical that has no use, above 1 tonne per year on the territory of a State Party or in any other place under the jurisdiction or control of a State Party, for purposes not prohibited under this Convention, but can be used for Chemical Weapons purposes; or

(ii) For filling Chemical Weapons, including, *inter alia*, the filling of chemicals listed in Schedule I into munitions, devices or bulk storage containers; the filling of chemicals into containers that form part of assembled binary munitions and devices or into chemical submunitions that form part of assembled unitary munitions and devices, and the loading of the containers and chemical submunitions into the respective munitions and devices;

(b) Does not mean:

(i) Any facility having a production capacity for synthesis of chemicals specified in sub-paragraph (a) (i) that is less than 1 tonne;

(ii) Any facility in which a chemical specified in sub-paragraph (a) (i) is or was produced as an unavoidable by-product of activities for purposes not prohibited under this Convention, provided that the chemical does not exceed 3 per cent. of the total product and that the facility is subject to declaration and inspection under the Annex on Implementation and Verification (hereinafter referred to as "Verification Annex"); or

(iii) The single small-scale facility for production of chemicals listed in Schedule I for purposes not prohibited under this Convention as referred to in Part VI of the Verification Annex.

## 9. "Purposes Not Prohibited Under this Convention" means:

(a) Industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

(b) Protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;

(c) Military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare;

(d) Law enforcement including domestic riot control purposes.

10. "Production Capacity" means: The annual quantitative potential for manufacturing a specific chemical based on the technological process actually used or, if the process is not yet operational, planned to be used at the relevant facility. It shall be deemed to be equal to the nameplate capacity or, if the nameplate capacity is not available, to the design capacity. The nameplate capacity is the product output under conditions optimized for maximum quantity for the production facility, as demonstrated by one or more test-runs. The design capacity is the corresponding theoretically calculated product output.

11. "Organization" means: The Organization for the Prohibition of Chemical Weapons established pursuant to Article VIII of this Convention.

12. For the purposes of Article VI:

- (a) "Production" of a chemical means its formation through chemical reaction;
- (b) "Processing" of a chemical means a physical process, such as formulation, extraction and purification, in which a chemical is not converted into another chemical;
- (c) "Consumption" of a chemical means its conversion into another chemical *via* a chemical reaction.

## ARTICLE III

## DECLARATIONS

1. Each State Party shall submit to the Organization, not later than 30 days after this Convention enters into force for it, the following declarations, in which it shall:

(a) With respect to chemical weapons:

(i) Declare whether it owns or possesses any chemical weapons, or whether there are any chemical weapons located in any place under its jurisdiction or control;

(ii) Specify the precise location, aggregate quantity and detailed inventory of chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with Part IV (A), paragraphs 1 to 3, of the Verification Annex, except for those chemical weapons referred to in sub-paragraph (iii);

(iii) Report any chemical weapons on its territory possessed by another State and located in any place under control of another State, in accordance with Part IV (A), paragraph 4, of the Verification Annex;

(iv) Declare whether it has transferred or received, directly or indirectly, any chemical weapons since 1 January 1946 and specify the transfer or receipt of such weapons, in accordance with Part IV (A), paragraph 5, of the Verification Annex;

(v) Provide its general plan for destruction of chemical weapons that it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with Part IV (A), paragraph 6, of the Verification Annex;

(b) With respect to old chemical weapons and abandoned chemical weapons:

(i) Declare whether it has on its territory old chemical weapons and provide all available information in accordance with Part IV (B), paragraph 3, of the Verification Annex;

(ii) Declare whether there are abandoned chemical weapons on its territory and provide all available information in accordance with Part IV (B), paragraph 8, of the Verification Annex;

(iii) Declare whether it has abandoned chemical weapons on the territory of other States and provide all available information in accordance with Part IV (B), paragraph 10, of the Verification Annex;

(c) With respect to chemical weapons production facilities:

(i) Declare whether it has or has had any chemical weapons production facility under its ownership or possession, or that is or has been located in any place under its jurisdiction or control at any time since 1 January 1946;

(ii) Specify any chemical weapons production facility it has or has had under its ownership or possession or that is or has been located in any place under its jurisdiction or control at any time since 1 January 1946, in accordance with Part V, paragraph 1, of the Verification Annex, except for those facilities referred to in sub-paragraph (iii);

(iii) Report any chemical weapons production facility on its territory that another State has or has had under its ownership and possession and that is or has been located in any place under the jurisdiction or control of another State at any time since 1 January 1946, in accordance with Part V, paragraph 2, of the Verification Annex;

(iv) Declare whether it has transferred or received, directly or indirectly, any equipment for the production of chemical weapons since 1 January 1946 and specify the transfer or receipt of such equipment, in accordance with Part V, paragraphs 3 to 5, of the Verification Annex;

(v) Provide its general plan for destruction of any chemical weapons production facility it owns or possesses, or that is located in any place under its jurisdiction or control, in accordance with Part V, paragraph 6, of the Verification Annex;

(vi) Specify actions to be taken for closure of any chemical weapons production facility it owns or possesses, or that is located in any place under its jurisdiction or control, in accordance with Part V, paragraph 1 (i), of the Verification Annex;

(vii) Provide its general plan for any temporary conversion of any chemical weapons production facility it owns or possesses, or that is located in any place under its jurisdiction or control, into a chemical weapons destruction facility, in accordance with Part V, paragraph 7, of the Verification Annex;

(d) With respect to other facilities, specify the precise location, nature and general scope of activities of any facility or establishment under its ownership or possession, or located in any place under its jurisdiction or control, and that has been designed, constructed or used since 1 January 1946 primarily for development of chemical weapons. Such declaration shall include, *inter alia*, laboratories and test and evaluation sites;

(e) With respect to riot control agents specify the chemical name, structural formula and Chemical Abstracts Service (CAS) registry number, if assigned, of each chemical it holds for riot control purposes. This declaration shall be updated not later than 30 days after any change becomes effective.

2. The provisions of this Article and the relevant provisions of Part IV of the Verification Annex shall not, at the discretion of a State Party, apply to chemical weapons buried on its territory before 1 January 1977 and which remain buried, or which had been dumped at sea before 1 January 1985.



## ARTICLE IV

## CHEMICAL WEAPONS

1. The provisions of this Article and the detailed procedures for its implementation shall apply to all chemical weapons owned or possessed by a State Party, or that are located in any place under its jurisdiction or control, except old chemical weapons and abandoned chemical weapons to which Part IV (B) of the Verification Annex applies.

2. Detailed procedures for the implementation of this Article are set forth in the Verification Annex.

3. All locations at which chemical weapons specified in paragraph 1 are stored or destroyed shall be subject to systematic verification through on-site inspection and monitoring with on-site instruments, in accordance with Part IV (A) of the Verification Annex.

4. Each State Party shall, immediately after the declaration under Article III, paragraph 1 (a), has been submitted, provide access to chemical weapons specified in paragraph 1 for the purpose of systematic verification of the declaration through on-site inspection. Thereafter, each State Party shall not remove any of these chemical weapons, except to a chemical weapons destruction facility. It shall provide access to such chemical weapons, for the purpose of systematic on-site verification.

5. Each State Party shall provide access to any chemical weapons destruction facilities and their storage areas, that it owns or possesses, or that are located in any place under its jurisdiction or control, for the purpose of systematic verification through on-site inspection and monitoring with on-site instruments.

6. Each State Party shall destroy all chemical weapons specified in paragraph 1 pursuant to the Verification Annex and in accordance with the agreed rate and sequence of destruction (hereinafter referred to as "order of destruction"). Such destruction shall begin not later than two years' after this Convention enters into force for it and shall finish not later than 10 years after entry into force of this Convention. A State Party is not precluded from destroying such chemical weapons at a faster rate.

7. Each State Party shall:

(a) Submit detailed plans for the destruction of chemical weapons specified in paragraph 1 not later than 60 days before each annual destruction period begins, in accordance with Part IV (A), paragraph 29, of the Verification Annex; the detailed plans shall encompass all stocks to be destroyed during the next annual destruction period;

(b) Submit declarations annually regarding the implementation of its plans for destruction of chemical weapons specified in paragraph 1, not later than 60 days after the end of each annual destruction period; and

(c) Certify, not later than 30 days after the destruction process has been completed, that all chemical weapons specified in paragraph 1 have been destroyed.

8. If a State ratifies or accedes to this Convention after the 10-year period for destruction set forth in paragraph 6, it shall destroy chemical weapons specified in paragraph 1 as soon as possible. The order of destruction and procedures for stringent verification for such a State Party shall be determined by the Executive Council.

9. Any chemical weapons discovered by a State Party after the initial declaration of chemical weapons shall be reported, secured and destroyed in accordance with Part IV (A) of the Verification Annex.

10. Each State Party, during transportation, sampling, storage and destruction of chemical weapons, shall assign the highest priority to ensuring the safety of people and to protecting the environment. Each State Party shall transport, sample, store and destroy

chemical weapons in accordance with its national standards for safety and emissions.

11. Any State Party which has on its territory chemical weapons that are owned or possessed by another State, or that are located in any place under the jurisdiction or control of another State, shall make the fullest efforts to ensure that these chemical weapons are removed from its territory not later than one year after this Convention enters into force for it. If they are not removed within one year, the State Party may request the Organization and other States Parties to provide assistance in the destruction of these chemical weapons.

12. Each State Party undertakes to cooperate with other States Parties that request information or assistance on a bilateral basis or through the Technical Secretariat regarding methods and technologies for the safe and efficient destruction of chemical weapons.

13. In carrying out verification activities pursuant to this Article and Part IV (A) of the Verification Annex, the Organization shall consider measures to avoid unnecessary duplication of bilateral or multilateral agreements on verification of chemical weapons storage and their destruction among States Parties.

To this end, the Executive Council shall decide to limit verification to measures complementary to those undertaken pursuant to such a bilateral or multilateral agreement, if it considers that:

(a) Verification provisions of such an agreement are consistent with the verification provisions of this Article and Part IV (A) of the Verification Annex;

(b) Implementation of such an agreement provides for sufficient assurance of compliance with the relevant provisions of this Convention; and

(c) Parties to the bilateral or multilateral agreement keep the Organization fully informed about their verification activities.

14. If the Executive Council takes a decision pursuant to paragraph 13, the Organization shall have the right to monitor the implementation of the bilateral or multilateral agreement.

15. Nothing in paragraphs 13 and 14 shall affect the obligations of a State Party to provide declarations pursuant to Article III, this Article and Part IV (A) of the Verification Annex.

16. Each State Party shall meet the costs of destruction of chemical weapons it is obliged to destroy. It shall also meet the costs of verification of storage and destruction of these chemical weapons unless the Executive Council decides otherwise. If the Executive Council decides to limit verification measures of the Organization pursuant to paragraph 13, the costs of complementary verification and monitoring by the Organization shall be paid in accordance with the United Nations scale of assessment, as specified in Article VIII, paragraph 7.

17. The provisions of this Article and the relevant provisions of Part IV of the Verification Annex shall not, at the discretion of a State Party, apply to chemical weapons buried on its territory before 1 January 1977 and which remain buried, or which had been dumped at sea before 1 January 1985.

## ARTICLE V

## CHEMICAL WEAPONS PRODUCTION FACILITIES

1. The provisions of this Article and the detailed procedures for its implementation shall apply to any and all chemical weapons production facilities owned or possessed by a State Party, or that are located in any place under its jurisdiction or control.

2. Detailed procedures for the implementation of this Article are set forth in the Verification Annex.

3. All chemical weapons production facilities specified in paragraph 1 shall be subject to systematic verification through on-site inspection and monitoring with on-site instruments in accordance with Part V of the Verification Annex.

4. Each State Party shall cease immediately all activity at chemical weapons production facilities specified in paragraph 1, except activity required for closure.

5. No State Party shall construct any new chemical weapons production facilities or modify any existing facilities for the purpose of chemical weapons production or for any other activity prohibited under this Convention.

6. Each State Party shall, immediately after the declaration under Article III, paragraph 1 (c), has been submitted, provide access to chemical weapons production facilities specified in paragraph 1, for the purpose of systematic verification of the declaration through on-site inspection.

7. Each State Party shall:

(a) Close, not later than 90 days after this Convention enters into force for it, all chemical weapons production facilities specified in paragraph 1, in accordance with Part V of the Verification Annex, and give notice thereof; and

(b) Provide access to chemical weapons production facilities specified in paragraph 1, subsequent to closure, for the purpose of systematic verification through on-site inspection and monitoring with on-site instruments in order to ensure that the facility remains closed and is subsequently destroyed.

8. Each State Party shall destroy all chemical weapons production facilities specified in paragraph 1 and related facilities and equipment, pursuant to the Verification Annex and in accordance with an agreed rate and sequence of destruction (hereinafter referred to as "order of destruction"). Such destruction shall begin not later than one year after this Convention enters into force for it, and shall finish not later than ten years after entry into force of this Convention. A State Party is not precluded from destroying such facilities at a faster rate.

9. Each State Party shall:

(a) Submit detailed plans for destruction of chemical weapons production facilities specified in paragraph 1, not later than 180 days before the destruction of each facility begins;

(b) Submit declarations annually regarding the implementation of its plans for the destruction of all chemical weapons production facilities specified in paragraph 1, not later than 90 days after the end of each annual destruction period; and

(c) Certify, not later than 30 days after the destruction process has been completed, that all chemical weapons production facilities specified in paragraph 1 have been destroyed.

10. If a State ratifies or accedes to this Convention after the 10-year period for destruction set forth in paragraph 8, it shall destroy chemical weapons production facilities specified in paragraph 1 as soon as possible. The order of destruction and procedures for stringent verification for such a State Party shall be determined by the Executive Council.



II. Each State Party, during the destruction of chemical weapons production facilities, shall assign the highest priority to ensuring the safety of people and to protecting the environment. Each State Party shall destroy chemical weapons production facilities in accordance with its national standards for safety and emissions.

12. Chemical weapons production facilities specified in paragraph 1 may be temporarily converted for destruction of chemical weapons in accordance with Part V, paragraphs 18 to 25, of the Verification Annex. Such a converted facility must be destroyed as soon as it is no longer in use for destruction of chemical weapons but, in any case, not later than 10 years after entry into force of this Convention.

13. A State Party may request, in exceptional cases of compelling need, permission to use a chemical weapons production facility specified in paragraph 1 for purposes not prohibited under this Convention. Upon the recommendation of the Executive Council, the Conference of the States Parties shall decide whether or not to approve the request and shall establish the conditions upon which approval is contingent in accordance with Part V, Section D, of the Verification Annex.

14. The chemical weapons production facility shall be converted in such a manner that the converted facility is not more capable of being reconverted into a chemical weapons production facility than any other facility used for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes not involving chemicals listed in Schedule 1.

15. All converted facilities shall be subject to systematic verification through on-site inspection and monitoring with on-site instruments in accordance with Part V, Section D, of the Verification Annex.

16. In carrying out verification activities pursuant to this Article and Part V of the Verification Annex, the Organization shall consider measures to avoid unnecessary duplication of bilateral or multilateral agreements on verification of chemical weapons production facilities and their destruction among States Parties.

To this end, the Executive Council shall decide to limit the verification to measures complementary to those undertaken pursuant to such a bilateral or multilateral agreement, if it considers that:

(a) Verification provisions of such an agreement are consistent with the verification provisions of this Article and Part V of the Verification Annex;

(b) Implementation of the agreement provides for sufficient assurance of compliance with the relevant provisions of this Convention; and

(c) Parties to the bilateral or multilateral agreement keep the Organization fully informed about their verification activities.

17. If the Executive Council takes a decision pursuant to paragraph 16, the Organization shall have the right to monitor the implementation of the bilateral or multilateral agreement.

18. Nothing in paragraphs 16 and 17 shall affect the obligation of a State Party to make declarations pursuant to Article III, this Article and Part V of the Verification Annex.

19. Each State Party shall meet the costs of destruction of chemical weapons production facilities it is obliged to destroy. It shall also meet the costs of verification under this Article unless the Executive Council decides otherwise. If the Executive Council decides to limit verification measures of the Organization pursuant to paragraph 16, the costs of complementary verification and monitoring by the Organization shall be paid in accordance with the United Nations scale of assessment, as specified in Article VIII, paragraph 7.



## ARTICLE VI

## ACTIVITIES NOT PROHIBITED UNDER THIS CONVENTION

1. Each State Party has the right, subject to the provisions of this Convention, to develop, produce, otherwise acquire, retain, transfer and use toxic chemicals and their precursors for purposes not prohibited under this Convention.

2. Each State Party shall adopt the necessary measures to ensure that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used within its territory or in any other place under this jurisdiction or control for purposes not prohibited under this Convention. To this end, and in order to verify that activities are in accordance with obligations under this Convention, each State Party shall subject toxic chemicals and their precursors listed in Schedules 1, 2 and 3 of the Annex on Chemicals, facilities related to such chemicals, and other facilities as specified in the Verification Annex, that are located on its territory or in any other place under its jurisdiction or control, to verification measures as provided in the Verification Annex.

3. Each State Party shall subject chemicals listed in Schedule 1 (hereinafter referred to as "Schedule 1 chemicals") to the prohibitions on production, acquisition, retention, transfer and use as specified in Part VI of the Verification Annex. It shall subject Schedule 1 chemicals and facilities specified in Part VI of the Verification Annex to systematic verification through on-site inspection and monitoring with on-site instruments in accordance with that Part of the Verification Annex.

4. Each State Party shall subject chemicals listed in Schedule 2 (hereinafter referred to as "Schedule 2 chemicals") and facilities specified in Part VII of the Verification Annex to data monitoring and on-site verification in accordance with that Part of the Verification Annex.

5. Each State Party shall subject chemicals listed in Schedule 3 (hereinafter referred to as "Schedule 3 chemicals") and facilities specified in Part VIII of the Verification Annex to data monitoring and on-site verification in accordance with that Part of the Verification Annex.

6. Each State Party shall subject facilities specified in Part IX of the Verification Annex to data monitoring and eventual on-site verification in accordance with that Part of the Verification Annex unless decided otherwise by the Conference of the States Parties pursuant to Part IX, paragraph 22, of the Verification Annex.

7. Not later than thirty days after this Convention enters into force for it, each State Party shall make an initial declaration on relevant chemicals and facilities in accordance with the Verification Annex.

8. Each State Party shall make annual declarations regarding the relevant chemicals and facilities in accordance with the Verification Annex.

9. For the purpose of on-site verification, each State Party shall grant to the inspectors access to facilities as required in the Verification Annex.

10. In conducting verification activities, the Technical Secretariat shall avoid undue intrusion into the State Party's chemical activities for purposes not prohibited under this Convention and, in particular, abide by the provisions set forth in the Annex on the Protection of Confidential Information (hereinafter referred to as "Confidentiality Annex").

11. The provisions of this Article shall be implemented in a manner which avoids hampering the economic or technological development of States Parties, and international cooperation in the field of chemical activities for purposes not prohibited under this Convention including the international exchange of scientific and technical information and chemicals and equipment for the production, processing or use of chemicals for purposes not prohibited under this Convention.

## ARTICLE VII

## NATIONAL IMPLEMENTATION MEASURES

**General undertakings**

1. Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligation under this Convention. In particular, it shall:

(a) Prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity;

(b) Not permit in any place under its control any activity prohibited to a State Party under this Convention; and

(c) Extend its penal legislation enacted under sub-paragraph (a) to any activity prohibited to a State Party under this Convention undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.

2. Each State Party shall cooperate with other States Parties and afford the appropriate form of legal assistance to facilitate the implementation of the obligations under paragraph 1.

3. Each State Party, during the implementation of its obligations under this Convention, shall assign the highest priority to ensuring the safety of people and to protecting the environment, and shall cooperate as appropriate with other States Parties in this regard.

**Relations between the State Party and the Organization**

4. In order to fulfil its obligation under this Convention, each State Party shall designate or establish a National Authority to serve as the national focal point for effective liaison with the Organization and other States Parties. Each State Party shall notify the Organization of its National Authority at the time that this Convention enters into force for it.

5. Each State Party shall inform the Organization of the legislative and administrative measures taken to implement this Convention.

6. Each State Party shall treat as confidential and afford special handling to information and data that it receives in confidence from the Organization in connection with the implementation of this Convention.

It shall treat such information and data exclusively in connection with its rights and obligations under this Convention and in accordance with the provisions set forth in the Confidentiality Annex.

7. Each State Party undertakes to cooperate with the Organization in the exercise of all its functions and in particular to provide assistance to the Technical Secretariat.

## ARTICLE VIII

## THE ORGANIZATION

## A. GENERAL PROVISIONS

1. The States Parties to this Convention hereby establish the Organization for the Prohibition of Chemical Weapons to achieve the object and purpose of this Convention, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties.

2. All States Parties to this Convention shall be members of the Organization. A State Party shall not be deprived of its membership in the Organization.

3. The seat of the Headquarters of the Organization shall be The Hague, Kingdom of the Netherlands.

4. There are hereby established as the organs of the Organization: the Conference of the States Parties, the Executive Council, and the Technical Secretariat.

5. The Organization shall conduct its verification activities provided for under this Convention in the least intrusive manner possible consistent with the timely and efficient accomplishment of their objectives. It shall request only the information and data necessary to fulfil its responsibilities under this Convention. It shall take every precaution to protect the confidentiality of information on civil and military activities and facilities coming to its knowledge in the implementation of this Convention and, in particular, shall abide by the provisions set forth in the Confidentiality Annex.

6. In undertaking its verification activities the Organization shall consider measures to make use of advances in science and technology.

7. The costs of the Organizations' activities shall be paid by States Parties in accordance with the United Nations scale of assessment adjusted to take into account differences in membership between the United Nations and this Organization, and subject to the provisions of Articles IV and V. Financial contributions of States Parties to the Preparatory Commission shall be deducted in an appropriate way from their contributions to the regular budget. The budget of the Organization shall comprise two separate chapters, one relating to administrative and other costs, and one relating to verification costs.

8. A member of the Organization which is in arrears in the payment of its financial contribution to the Organization shall have no vote in the Organization if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding two full years. The Conference of the States Parties may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

## B. THE CONFERENCE OF THE STATES PARTIES

*Composition, procedures and decision-making*

9. The Conference of the States Parties (hereinafter referred to as "the Conference") shall be composed of all members of this Organization. Each member shall have one representative in the Conference, who may be accompanied by alternates and advisers.

10. The first session of the Conference shall be convened by the depositary not later than 30 days after the entry into force of this Convention.

11. The Conference shall meet in regular sessions which shall be held annually unless it decides otherwise.

12. Special sessions of the Conference shall be convened:

(a) When decided by the Conference;



(b) When requested by the Executive Council;

(c) When requested by any member and supported by one-third of the members;

or

(d) In accordance with paragraph 22 to undertake reviews of the operation of this Convention,

Except in the case of sub-paragraph (d), the special session shall be convened not later than 30 days after receipt of the request by the Director-General of the Technical Secretariat, unless specified otherwise in the request.

13. The Conference shall also be convened in the form of an Amendment Conference in accordance with Article XV, paragraph 2.

14. Sessions of the Conference shall take place at the seat of the Organization unless the Conference decides otherwise.

15. The Conference shall adopt its rules of procedure. At the beginning of each regular session, it shall elect its Chairman and such other officers as may be required. They shall hold office until a new Chairman and other officers are elected at the next regular session.

16. A majority of the members of the Organization shall constitute a quorum for the Conference.

17. Each member of the Organization shall have one vote in the Conference.

18. The Conference shall take decisions on questions of procedure by a simple majority of the members present and voting. Decisions on matters of substance should be taken as far as possible by consensus. If consensus is not attainable when an issue comes up for decision, the Chairman shall defer any vote for 24 hours and during this period of deferment shall make every effort to facilitate achievement of consensus, and shall report to the Conference before the end of this period. If consensus is not possible at the end of 24 hours, the Conference shall take the decision by a two-thirds majority of members present and voting unless specified otherwise in this Convention. When the issue arises as to whether the question is one of substance or not, that question shall be treated as a matter of substance unless otherwise decided by the Conference by the majority required for decisions on matters of substance.

19. The Conference shall be the principal organ of the Organization. It shall consider any questions, matters or issues within the scope of this Convention, including those relating to the powers and functions of the Executive Council and the Technical Secretariat. It may make recommendations and take decisions on any questions, matters or issues related to this Convention raised by a State Party or brought to its attention by the Executive Council.

20. The Conference shall oversee the implementation of this Convention, and act in order to promote its object and purpose. The Conference shall review compliance with this Convention. It shall also oversee the activities of the Executive Council and the Technical Secretariat and may issue guidelines in accordance with this Convention to either of them in the exercise of their functions.

21. The Conference shall:

(a) Consider and adopt at its regular sessions the report, programme and budget of the Organization, submitted by the Executive Council, as well as consider other reports;

(b) Decide on the scale of financial contributions to be paid by States Parties in accordance with paragraph 7;

(c) Elect the members of the Executive Council;



(d) Appoint the Director-General of the Technical Secretariat (hereinafter referred to as "the Director-General");

(e) Approve the rules of procedure of the Executive Council submitted by the latter;

(f) Establish such subsidiary organs as it finds necessary for the exercise of its functions in accordance with this Convention;

(g) Foster international cooperation for peaceful purposes in the field of chemical activities;

(h) Review scientific and technological developments that could affect the operation of this Convention and, in this context, direct the Director-General to establish a Scientific Advisory Board to enable him, in the performance of his functions, to render specialized advice in areas of science and technology relevant to this Convention, to the Conference, the Executive Council or States Parties. The Scientific Advisory Board shall be composed of independent experts appointed in accordance with terms of reference adopted by the Conference;

(i) Consider and approve at its first session any draft agreements, provisions and guidelines developed by the Preparatory Commission;

(j) Establish at its first session the voluntary fund for assistance in accordance with Article X;

(k) Take the necessary measure to ensure compliance with this Convention and to redress and remedy any situation which contravenes the provisions of this Convention in accordance with Article XII.

22. The Conference shall not later than one year after the expiry of the fifth and the tenth year after the entry into force of this Convention, and at such other times within that period as may be decided upon, convene in special sessions to undertake reviews of the operation of this Convention. Such reviews shall take into account any relevant scientific and technological developments. At intervals of five years thereafter, unless otherwise decided upon, further sessions of the Conference shall be convened with the same objective.

### C. THE EXECUTIVE COUNCIL

#### *Composition, procedure and decision-making*

23. The Executive Council shall consist of 41 members. Each State Party shall have the right, in accordance with the principle of rotation, to serve on the Executive Council. The members of the Executive Council shall be elected by the Conference for a term of two years. In order to ensure the effective functioning of this Convention, due regard being specially paid to equitable geographical distribution, to the importance of chemical industry, as well as to political and security interests, the Executive Council shall be composed as follows:

(a) Nine States Parties from Africa to be designated by States Parties located in this region. As a basis for this designation it is understood that, out of these nine States Parties, three members shall, as a rule, be the States Parties with the most significant national chemical industry in the region as determined by internationally reported and published data; in addition, the regional group shall agree also to take into account other regional factors in designating these three members;

(b) Nine States Parties from Asia to be designated by States Parties located in this region. As a basis for this designation it is understood that, out of these nine States Parties, four members shall, as a rule, be the States Parties with the most significant national chemical industry in the region as determined by internationally reported and published data; in addition, the regional group shall agree also to take into account other regional factors in designating these four members;

(c) Five States Parties from Eastern Europe to be designated by States Parties located in this region. As a basis for this designation it is understood that, out of these five States Parties, one member shall, as a rule, be the State Party with the most significant national chemical industry in the region as determined by internationally reported and published data; in addition, the regional group shall agree also to take into account other regional factors in designating this one member;

(d) Seven States Parties from Latin America and the Caribbean to be designated by States Parties located in this region. As a basis for this designation it is understood that, out of these seven States Parties, three members shall, as a rule, be the States Parties with the most significant national chemical industry in the region as determined by internationally reported and published data; in addition, the regional group shall agree also to take into account other regional factors in designating these three members;

(e) Ten States Parties from among Western European and other States to be designated by States Parties located in this region. As a basis for this designation it is understood that, out of these ten States Parties, five members shall, as a rule, be the States Parties with the most significant national chemical industry in the region as determined by internationally reported and published data; in addition, the regional group shall agree also to take into account other regional factors in designating these five members;

(f) One further State Party to be designated consecutively by States Parties located in the regions of Asia and Latin America and the Caribbean. As a basis for this designation it is understood that this State Party shall be a rotating member from these regions.

24. For the first election of the Executive Council 20 members shall be elected for a term of one year, due regard being paid to the established numerical proportions as described in paragraph 23.

25. After the full implementation of Articles IV and V the Conference may, upon the request of a majority of the members of the Executive Council, review the composition of the Executive Council taking into account developments related to the principles specified in paragraph 23 that are governing its composition.

26. The Executive Council shall elaborate its rules of procedure and submit them to the Conference for approval.

27. The Executive Council shall elect its Chairman from among its members.

28. The Executive Council shall meet for regular sessions. Between regular sessions it shall meet as often as may be required for the fulfilment of its powers and functions.

29. Each member of the Executive Council shall have one vote. Unless otherwise specified in this Convention, the Executive Council shall take decisions on matters of substance by a two-thirds majority of all its members. The Executive Council shall take decisions on questions of procedure by a simple majority of all its members. When the issue arises as to whether the question is one of substance or not, that question shall be treated as a matter of substance unless otherwise decided by the Executive Council by the majority required for decisions on matters of substance.

#### *Powers and functions*

30. The Executive Council shall be the executive organ of the Organization. It shall be responsible to the Conference. The Executive Council shall carry out the powers and functions entrusted to it under this Convention, as well as those functions delegated to it by the Conference. In so doing, it shall act in conformity with the recommendations, decisions and guidelines of the Conference and assure their proper and continuous implementation.

31. The Executive Council shall promote the effective implementation of, and compliance with, this Convention. It shall supervise the activities of the Technical Secretariat, cooperate with the National Authority of each State Party and facilitate consultations and cooperation among States Parties at their request.

32. The Executive Council shall:

(a) Consider and submit to the Conference the draft programme and budget of the Organization;

(b) Consider and submit to the Conference the draft report of the Organization on the implementation of this Convention, the report on the performance of its own activities and such special reports as it deems necessary or which the Conference may request;

(c) Make arrangements for the sessions of the Conference including the preparation of the draft agenda.

33. The Executive Council may request the convening of special session of the Conference.

34. The Executive Council shall:

(a) Conclude agreements or arrangements with States and international Organizations on behalf of the Organization, subject to prior approval by the Conference;

(b) Conclude agreements with States Parties on behalf of the Organization in connection with Article X and supervise the voluntary fund referred to in Article X;

(c) Approve agreements or arrangements relating to the implementation of verification activities, negotiated by the Technical Secretariat with States Parties.

35. The Executive Council shall consider any issue or matter within its competence affecting this Convention and its implementation, including concerns regarding compliance, and cases of non-compliance, and, as appropriate, inform States Parties and bring the issue or matter to the attention of the Conference.

36. In its consideration of doubts or concerns regarding compliance and cases of non-compliance, including *inter alia*, abuse of the rights provided for under this Convention, the Executive Council shall consult with the States Parties involved and, as appropriate, request the State Party to take measures to redress the situation within a specified time. To the extent that the Executive Council considers further action to be necessary, it shall take, *inter alia*, one or more of the following measures:

(a) Inform all States Parties of the issue or matter;

(b) Bring the issue or matter to the attention of the Conference;

(c) Make recommendations to the Conference regarding measures to redress the situation and to ensure compliance.

The Executive Council shall, in cases of particular gravity and urgency, bring the issue or matter, including relevant information and conclusions, directly to the attention of the United Nations General Assembly and the United Nations Security Council. It shall at the same time inform all States Parties of this step.

#### D. THE TECHNICAL SECRETARIAT

37. The Technical Secretariat shall assist the Conference and the Executive Council in the performance of their functions. The Technical Secretariat shall carry out the verification measures provided for in this Convention. It shall carry out the other functions entrusted to it under this Convention as well as those functions delegated to it by the Conference and the Executive Council.

38. The Technical Secretariat shall:

- (a) Prepare and submit to the Executive Council the draft programme and budget of the Organization;
- (b) Prepare and submit to the Executive Council the draft report of the Organization on the implementation of this Convention and such other reports as the Conference or the Executive Council may request;
- (c) Provide administrative and technical support to the Conference, the Executive Council and subsidiary organs;
- (d) Address and receive communications on behalf of the Organization to and from States Parties on matters pertaining to the implementation of this Convention;
- (e) Provide technical assistance and technical evaluation to States Parties in the implementation of the provisions of this Convention, including evaluation of scheduled and unscheduled chemicals.

39. The Technical Secretariat shall:

- (a) Negotiate agreements or arrangements relating to the implementation of verification activities with States Parties, subject to approval by the Executive Council;
- (b) Not later than 180 days after entry into force of this Convention, coordinate the establishment and maintenance of permanent stockpiles of emergency and humanitarian assistance by States Parties in accordance with Article X, paragraph 7 (b) and (c). The Technical Secretariat may inspect the items maintained for serviceability. Lists of items to be stockpiled shall be considered and approved by the Conference pursuant to paragraph 21 (i) above;
- (c) Administer the voluntary fund referred to in Article X, compile declarations made by the States Parties and register, when requested, bilateral agreements concluded between States Parties or between a State Party and the Organization for the purposes of Article X.

40. The Technical Secretariat shall inform the Executive Council of any problem that has arisen with regard to the discharge of its functions, including doubts, ambiguities or uncertainties about compliance with this Convention that have come to its notice in the performance of its verification activities and that it has been unable to resolve or clarify through its consultations with the State Party concerned.

41. The Technical Secretariat shall comprise a Director-General, who shall be its head and chief administrative officer, inspectors and such scientific, technical and other personnel as may be required.

42. The Inspectorate shall be a unit of the Technical Secretariat and shall act under the supervision of the Director-General.

43. The Director-General shall be appointed by the Conference upon the recommendation of the Executive Council for a term of four years, renewable for one further term, but not thereafter.

44. The Director-General shall be responsible to the Conference and the Executive Council for the appointment of the staff and the Organization and functioning of the Technical Secretariat. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Only citizens of States Parties shall serve as the Director-General, as inspectors or as other members of the professional and clerical staff. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible. Recruitment shall be guided by the principle that the staff shall be kept to a minimum necessary for the proper discharge of the responsibilities of the Technical Secretariat.



45. The Director-General shall be responsible for the organization and functioning of the Scientific Advisory Board referred to in paragraph 21(h). The Director-General shall, in consultation with States Parties, appoint members of the Scientific Advisory Board, who shall serve in their individual capacity. The members of the Board shall be appointed on the basis of their expertise in the particular scientific fields relevant to the implementation of this Convention. The Director-General may also, as appropriate, in consultation with members of the Board, establish temporary working groups of scientific experts to provide recommendations on specific issues. In regard to the above, States Parties may submit lists of experts to the Director-General.

46. In the performance of their duties, the Director-General, the inspectors and the other members of the staff shall not seek or receive instructions from any Government or from any other source external to the Organization. They shall refrain from any action that might reflect on their positions as international officers responsible only to the Conference and the Executive Council.

47. Each State Party shall respect the exclusively international character of the responsibilities of the Director-General, the inspectors and the other members of the staff and not seek to influence them in the discharge of their responsibilities.

#### **E. PRIVILEGES AND IMMUNITIES**

48. The Organization shall enjoy on the territory and in any other place under the jurisdiction or control of a State Party such legal capacity and such privileges and immunities as are necessary for the exercise of its functions.

49. Delegates of States Parties, together with their alternates and advisers, representatives appointed to the Executive Council together with alternates and advisers, the Director-General and the staff of the Organization shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connection with the Organization.

50. The legal capacity, privileges and immunities referred to in this Article shall be defined in agreements between the Organization and the States Parties as well as in an agreement between the Organization and the State in which the headquarters of the Organization is seated. These agreements shall be considered and approved by the Conference pursuant to paragraph 21 (i).

51. Notwithstanding paragraphs 48 and 49, the privileges and immunities enjoyed by the Director-General and the staff of the Technical Secretariat during the conduct of verification activities shall be those set forth in Part II, Section B, of the Verification Annex.

## ARTICLE IX

## CONSULTATIONS, COOPERATION AND FACT-FINDING

1. States Parties shall consult and cooperate, directly among themselves, or through the Organization or other appropriate international procedures, including procedures within the framework of the United Nations and in accordance with its Charter, on any matter which may be raised relating to the object and purpose, or the implementation of the provisions, of this Convention.

2. Without prejudice to the right of any State Party to request a challenge inspection, States Parties should, whenever possible, first make every effort to clarify and resolve, through exchange of information and consultations among themselves, any matter which may cause doubt about compliance with this Convention, or which gives rise to concerns about a related matter which may be considered ambiguous. A State Party which receives a request from another State Party for clarification of any matter which the requesting State Party believes causes such a doubt or concern shall provide the requesting State Party as soon as possible, but in any case not later than 10 days after the request, with information sufficient to answer the doubt or concern raised along with an explanation of how the information provided resolves the matter. Nothing in this Convention shall affect the right of any two or more States Parties to arrange by mutual consent for inspections or any other procedures among themselves to clarify and resolve any matter which may cause doubt about compliance or gives rise to a concern about a related matter which may be considered ambiguous. Such arrangements shall not affect the rights and obligations of any State Party under other provisions of this Convention.

*Procedure for requesting clarification*

3. A State Party shall have the right to request the Executive Council to assist in clarifying any situation which may be considered ambiguous or which gives rise to a concern about the possible non-compliance of another State Party with this Convention. The Executive Council shall provide appropriate information in its possession relevant to such a concern.

4. A State Party shall have the right to request the Executive Council to obtain clarification from another State Party on any situation which may be considered ambiguous or which gives rise to a concern about its possible non-compliance with this Convention. In such a case, the following shall apply:

(a) The Executive Council shall forward the request for clarification to the State Party concerned through the Director-General not later than 24 hours after its receipt;

(b) The requested State Party shall provide the clarification to the Executive Council as soon as possible, but in any case not later than 10 days after the receipt of the request;

(c) The Executive Council shall take note of the clarification and forward it to the requesting State Party not later than 24 hours after its receipt;

(d) If the requesting State Party deems the clarification to be inadequate, it shall have the right to request the Executive Council to obtain from the requested State Party further clarification;

(e) For the purpose of obtaining further clarification requested under subparagraph (d), the Executive Council may call on the Director-General to establish a group of experts from the Technical Secretariat, or if appropriate staff are not available in the Technical Secretariat, from elsewhere, to examine all available information and data relevant to the situation causing the concern. The group of experts shall submit a factual report to the Executive Council on its findings;

(f) If the requesting State Party considers the clarification obtained under subparagraphs (d) and (e) to be unsatisfactory, it shall have the right to request a special

session of the Executive Council in which States Parties involved that are not members of the Executive Council shall be entitled to take part. In such a special session, the Executive Council shall consider the matter and may recommend any measure it deems appropriate to resolve the situation.

5. A State Party shall also have the right to request the Executive Council to clarify any situation which has been considered ambiguous or has given rise to a concern about its possible non-compliance with this Convention. The Executive Council shall respond by providing such assistance as appropriate.

6. The Executive Council shall inform the States Parties about any request for clarification provided in this Article.

7. If the doubt or concern of a State Party about a possible non-compliance has not been resolved within 60 days after the submission of the request for clarification to the Executive Council, or it believes its doubts warrant urgent consideration, notwithstanding its right to request a challenge inspection, it may request a special session of the Conference in accordance with Article VIII, paragraph 12(c). At such a special session, the Conference shall consider the matter and may recommend any measure it deems appropriate to resolve the situation.

#### *Procedures for challenge inspections*

8. Each State Party has the right to request an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the provisions of this Convention, and to have this inspection conducted anywhere without delay by an inspection team designated by the Director-General and in accordance with the Verification Annex.

9. Each State Party is under the obligation to keep the inspection request within the scope of this Convention and to provide in the inspection request all appropriate information on the basis of which a concern has arisen regarding possible non-compliance with this Convention as specified in the Verification Annex. Each State Party shall refrain from unfounded inspection requests, care being taken to avoid abuse. The challenge inspection shall be carried out for the sole purpose of determining facts relating to the possible non-compliance.

10. For the purpose of verifying compliance with the provisions of this Convention, each State Party shall permit the Technical Secretariat to conduct the on-site challenge inspection pursuant to paragraph 8.

11. Pursuant to a request for a challenge inspection of a facility or location, and in accordance with the procedures provided for in the Verification Annex, the inspected State Party shall have:

(a) The right and the obligation to make every reasonable effort to demonstrate its compliance with this Convention and, to this end, to enable the inspection team to fulfil its mandate;

(b) The obligation to provide access within the requested site for the sole purpose of establishing facts relevant to the concern regarding possible non-compliance; and

(c) The right to take measures to protect sensitive installations, and to prevent disclosure of confidential information and data, not related to this Convention.

12. With regard to an observer, the following shall apply:

(a) The requesting State Party may, subject to the agreement of the inspected State Party, send a representative who may be a national either of the requesting State Party or of a third State Party, to observe the conduct of the challenge inspection;

(b) The inspected State Party shall then grant access to the observer in accordance with the Verification Annex;

(c) The inspected State Party shall, as a rule, accept the proposed observer, but if the inspected State Party exercises a refusal, that fact shall be recorded in the final report.

13. The requesting State Party shall present an inspection request for an on-site challenge inspection to the Executive Council and at the same time to the Director-General for immediate processing.

14. The Director-General shall immediately ascertain that the inspection request meets the requirements specified in Part X, paragraph 4, of the Verification Annex, and, if necessary, assist the requesting State Party in filing the inspection request accordingly. When the inspection request fulfils the requirements, preparations for the challenge inspection shall begin.

15. The Director-General shall transmit the inspection request to the inspected State Party not less than 12 hours before the planned arrival of the inspection team at the point of entry.

16. After having received the inspection request, the Executive Council shall take cognizance of the Director-General's actions on the request and shall keep the case under its consideration throughout the inspection procedure. However, its deliberations shall not delay the inspection process.

17. The Executive Council may, not later than 12 hours after having received the inspection request, decide by a three-quarter majority of all its members against carrying out the challenge inspection, if it considers the inspection request to be frivolous, abusive or clearly beyond the scope of this Convention as described in paragraph 8. Neither the requesting nor the inspected State Party shall participate in such a decision. If the Executive Council decides against the challenge inspection, preparations shall be stopped, no further action on the inspection request shall be taken, and the States Parties concerned shall be informed accordingly.

18. The Director-General shall issue an inspection mandate for the conduct of the challenge inspection. The inspection mandate shall be the inspection request referred to in paragraphs 8 and 9 put into operational terms, and shall conform with the inspection request.

19. The challenge inspection shall be conducted in accordance with Part X or, in the case of alleged use, in accordance with Part XI of the Verification Annex. The inspection team shall be guided by the principle of conducting the challenge inspection in the least intrusive manner possible, consistent with the effective and timely accomplishment of its mission.

20. The inspected State Party shall assist the inspection team throughout the challenge inspection and facilitate its task. If the inspected State Party proposes, pursuant to Part X, Section C, of the Verification Annex, arrangements to demonstrate compliance with this Convention, alternative to full and comprehensive access, it shall make every reasonable effort, through consultations with the inspection team, to reach agreement on the modalities for establishing the facts with the aim of demonstrating its compliance.

21. The final report shall contain the factual findings as well as an assessment by the inspection team of the degree and nature of access and cooperation granted for the satisfactory implementation of the challenge inspection. The Director-General shall promptly transmit the final report of the inspection team to the requesting State Party, to the inspected State Party, to the Executive Council and to all other States Parties. The Director-General shall further transmit promptly to the Executive Council the assessments of the requesting and of the inspected States Parties, as well as the views of other States Parties which may be conveyed to the Director-General for that purpose, and then provide them to all States Parties.



22. The Executive Council shall, in accordance with its powers and functions, review the final report of the inspection team as soon as it is presented, and address any concerns as to:

- (a) Whether any non-compliance has occurred;
- (b) Whether the request had been within the scope of this Convention; and
- (c) Whether the right to request a challenge inspection had been abused.

23. If the Executive Council reaches the conclusion, in keeping with its powers and functions, that further action may be necessary with regard to paragraph 22, it shall take the appropriate measures to redress the situation and to ensure compliance with this Convention, including specific recommendations to the Conference. In the case of abuse, the Executive Council shall examine whether the requesting State Party should bear any of the financial implications of the challenge inspection.

24. The requesting State Party and the inspected State Party shall have the right to participate in the review process. The Executive Council shall inform the States Parties and the next session of the Conference of the outcome of the process.

25. If the Executive Council has made specific recommendations to the Conference, the Conference shall consider action in accordance with Article XII.

## ARTICLE X

## ASSISTANCE AND PROTECTION AGAINST CHEMICAL WEAPONS

1. For the purposes of this Article, "Assistance" means the coordination and delivery to States Parties of protection against chemical weapons, including, *inter alia*, the following: detection equipment and alarm systems; protective equipment; decontamination equipment and decontaminants; medical antidotes and treatments; and advice on any of these protective measures.

2. Nothing in this Convention shall be interpreted as impeding the right of any State Party to conduct research into, develop, produce, acquire, transfer or use means of protection against chemical weapons, for purposes not prohibited under this Convention.

3. Each State Party undertakes to facilitate, and shall have the right to participate in, the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemical weapons.

4. For the purposes of increasing the transparency of national programmes related to protective purposes, each State Party shall provide annually to the Technical Secretariat information on its programme, in accordance with procedures to be considered and approved by the Conference pursuant to Article VIII, paragraph 21(i).

5. The Technical Secretariat shall establish, not later than 180 days after entry into force of this Convention and maintain, for the use of any requesting State Party, a data bank containing freely available information concerning various means of protection against chemical weapons as well as such information as may be provided by States Parties.

The Technical Secretariat shall also, within the resources available to it, and at the request of a State Party, provide expert advice and assist the State Party in identifying how its programmes for the development and improvement of a protective capacity against chemical weapons could be implemented.

6. Nothing in this Convention shall be interpreted as impeding the right of States Parties to request and provide assistance bilaterally and to conclude individual agreements with other States Parties concerning the emergency procurement of assistance.

7. Each State Party undertakes to provide assistance through the organization and to this end to elect to take one or more of the following measures:

(a) To contribute to the voluntary fund for assistance to be established by the Conference at its first session;

(b) To conclude, if possible not later than 180 days after this Convention enters into force for it, agreements with the organization concerning the procurement, upon demand, of assistance;

(c) To declare, not later than 180 days after this Convention enters into force for it, the kind of assistance it might provide in response to an appeal by the organization. If, however, a State Party subsequently is unable to provide the assistance envisaged in its declaration, it is still under the obligation to provide assistance in accordance with this paragraph.

8. Each State Party has the right to request and, subject to the procedures set forth in paragraphs 9, 10 and 11, to receive assistance and protection against the use or threat of use of chemical weapons if it considers that:

(a) Chemical weapons have been used against it;

(b) Riot control agents have been used against it as a method of warfare; or

(c) It is threatened by actions or activities of any State that are prohibited for States Parties by Article I.

9. The request, substantiated by relevant information, shall be submitted to the Director-General, who shall transmit it immediately to the Executive Council and to all States Parties. The Director-General shall immediately forward the request to States Parties which have volunteered, in accordance with paragraph 7 (b) and (c), to dispatch emergency assistance in case of use of chemical weapons or use of riot control agents as a method of warfare, or humanitarian assistance in case of serious threat of use of chemical weapons or serious threat of use of riot control agents as a method of warfare to the State Party concerned not later than 12 hours after receipt of the request. The Director-General shall initiate, not later than 24 hours after receipt of the request, an investigation in order to provide foundation for further action. He shall complete the investigation within 72 hours and forward a report to the Executive Council. If additional time is required for completion of the investigation, an interim report shall be submitted within the same time-frame. The additional time required for investigation shall not exceed 72 hours. It may, however, be further extended by similar periods. Reports at the end of each additional period shall be submitted to the Executive Council. The investigation shall, as appropriate and in conformity with the request and the information accompanying the request, establish relevant facts related to the request as well as the type and scope of supplementary assistance and protection needed.

10. The Executive Council shall meet not later than 24 hours after receiving an investigation report to consider the situation and shall take a decision by simple majority within the following 24 hours on whether to instruct the Technical Secretariat to provide supplementary assistance. The Technical Secretariat shall immediately transmit to all States Parties and relevant international organizations the investigation report and the decision taken by the Executive Council. When so decided by the Executive Council, the Director-General shall provide assistance immediately. For this purpose, the Director-General may cooperate with the requesting State Party, other States Parties and relevant international organizations. The States Parties shall make the fullest possible efforts to provide assistance.

11. If the information available from the ongoing investigation or other reliable sources would give sufficient proof that there are victims of use of chemical weapons and immediate action is indispensable, the Director-General shall notify all States Parties and shall take emergency measures of assistance, using the resources the Conference has placed at his disposal for such contingencies. The Director-General shall keep the Executive Council informed of actions undertaken pursuant to this paragraph.

## ARTICLE XI

## ECONOMIC AND TECHNOLOGY DEVELOPMENT

1. The provisions of this Convention shall be implemented in a manner which avoids hampering the economic or technological development of States Parties, and international cooperation in the field of chemical activities for purposes not prohibited under this Convention including the international exchange of scientific and technical information and chemicals and equipment for the production, processing or use of chemicals for purposes not prohibited under this Convention.

2. Subject to the provisions of this Convention and without prejudice to the principles and applicable rules of international law, the States Parties shall:

(a) Have the right, individually or collectively, to conduct research with, to develop, produce, acquire, retain, transfer, and use chemicals;

(b) Undertake to facilitate, and have the right to participate in, the fullest possible exchange of chemicals, equipment and scientific and technical information relating to the development and application of chemistry for purposes not prohibited under this Convention;

(c) Not maintain among themselves any restrictions, including those in any international agreements, incompatible with the obligations undertaken under this Convention, which would restrict or impede trade and the development and promotion of scientific and technological knowledge in the field of chemistry for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

(d) Not use this Convention as grounds for applying any measures other than those provided for, or permitted, under this Convention nor use any other international agreement for pursuing an objective inconsistent with this Convention;

(e) Undertake to review their existing national regulations in the field of trade in chemicals in order to render them consistent with the object and purpose of this Convention.



## ARTICLE XII

## MEASURES TO REDRESS A SITUATION AND TO ENSURE COMPLIANCE, INCLUDING SANCTIONS

1. The Conference shall take the necessary measures, as set forth in paragraphs 2, 3 and 4, to ensure compliance with this Convention and to redress and remedy any situation which contravenes the provisions of this Convention. In considering action pursuant to this paragraph, the Conference shall take into account all information and recommendations on the issues submitted by the Executive Council.

2. In cases where a State Party has been requested by the Executive Council to take measures to redress a situation raising problems with regard to its compliance, and where the State Party fails to fulfil the request within the specified time, the Conference may, *inter alia* upon the recommendation of the Executive Council, restrict or suspend the State Party's rights and privileges under this Convention until it undertakes the necessary action to conform with its obligations under this Convention.

3. In cases where serious damage to the object and purpose of this Convention may result from activities prohibited under the Convention, in particular by Article I, the Conference may recommend collective measures to States Parties in conformity with international law.

4. The Conference shall, in cases of particular gravity, bring the issue, including relevant information and conclusions, to the attention of the United Nations General Assembly and the United Nations Security Council.

## ARTICLE XIII

## RELATION TO OTHER INTERNATIONAL AGREEMENTS

Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and under the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, signed at London, Moscow and Washington on 10 April 1972.

## ARTICLE XIV

## SETTLEMENT OF DISPUTES

1. Disputes that may arise concerning the application or the interpretation of this Convention shall be settled in accordance with the relevant provisions of this Convention and in conformity with the provisions of the Charter of the United Nations.
2. When a dispute arises between two or more States Parties, or between one or more States Parties and the Organization, relating to the interpretation or application of this Convention, the parties concerned shall consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of the parties' choice, including recourse to appropriate organs of this Convention and, by mutual consent, referral to the International Court of Justice in conformity with the Statute of the Court. The States Parties involved shall keep the Executive Council informed of actions being taken.
3. The Executive Council may contribute to the settlement of a dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States Parties to a dispute to start the settlement process of their choice and recommending a time-limit for any agreed procedure.
4. The Conference shall consider questions related to disputes raised by States Parties or brought to its attention by the Executive Council. The Conference shall, as it finds necessary, establish or entrust organs with tasks related to the settlement of these disputes in conformity with Article VIII, paragraph 21(f).
5. The Conference and the Executive Council are separately empowered, subject to authorization from the General Assembly of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of the activities of the Organization. An agreement between the Organization and the United Nations shall be concluded for this purpose in accordance with Article VIII, paragraph 34 (a).
6. This Article is without prejudice to Article IX or to the provisions on measures to redress a situation and to ensure compliance, including sanctions.

## ARTICLE XV

## AMENDMENTS

1. Any State Party may propose amendments to this Convention. Any State Party may also propose changes, as specified in paragraph 4, to the Annexes of this Convention. Proposals for amendments shall be subject to the procedures in paragraphs 2 and 3. Proposals for changes, as specified in paragraph 4, shall be subject to the procedures in paragraph 5.

2. The text of a proposed amendment shall be submitted to the Director-General for circulation to all States Parties and to the Depositary. The proposed amendment shall be considered only by an Amendment Conference. Such an Amendment Conference shall be convened if one third or more of the States Parties notify the Director-General not later than 30 days after its circulation that they support further consideration of the proposal. The Amendment Conference shall be held immediately following a regular session of the Conference unless the requesting States Parties ask for an earlier meeting. In no case shall an Amendment Conference be held less than 60 days after the circulation of the proposed amendment.

3. Amendments shall enter into force for all States Parties 30 days after deposit of the instruments of ratification or acceptance by all the States Parties referred to under subparagraph (b) below:

(a) When adopted by the Amendment Conference by a positive vote of a majority of all States Parties with no State Party casting a negative vote; and

(b) Ratified or accepted by all those States Parties casting a positive vote at the Amendment Conference.

4. In order to ensure the viability and the effectiveness of this Convention, provisions in the Annexes shall be subject to changes in accordance with paragraph 5, if proposed changes are related only to matters of an administrative or technical nature. All changes to the Annex on Chemicals shall be made in accordance with Paragraph 5. Sections A and C of the Confidentiality Annex, Part X of the Verification Annex, and those definitions in Part I of the Verification Annex which relate exclusively to challenge inspections, shall not be subject to changes in accordance with paragraph 5.

5. Proposed changes referred to in paragraph 4 shall be made in accordance with the following procedures:

(a) The text of the proposed changes shall be transmitted together with the necessary information to the Director-General. Additional information for the evaluation of the proposal may be provided by any State Party and the Director-General. The Director-General shall promptly communicate any such proposals and information to all States Parties, the Executive Council and the Depositary;

(b) Not later than 60 days after its receipt, the Director-General shall evaluate the proposal to determine all its possible consequences for the provisions of this Convention and its implementation and shall communicate any such information to all States Parties and the Executive Council;

(c) The Executive Council shall examine the proposal in the light of all information available to it, including whether the proposal fulfils the requirements of paragraph 4. Not later than 90 days after its receipt, the Executive Council shall notify its recommendation, with appropriate explanations, to all States Parties for consideration. States Parties shall acknowledge receipt within 10 days;

(d) If the Executive Council recommends to all States Parties that the proposal be adopted, it shall be considered approved if no State Party objects to it within 90 days after receipt of the recommendation. If the Executive Council recommends

that the proposal be rejected, it shall be considered rejected if no State Party objects to the rejection within 90 days after receipt of the recommendation;

(e) If a recommendation of the Executive Council does not meet with the acceptance required under sub-paragraph (d), a decision on the proposal, including whether it fulfils the requirements of paragraph 4, shall be taken as a matter of substance by the Conference at its next session;

(f) The Director-General shall notify all States Parties and the Depositary of any decision under this paragraph;

(g) Changes approved under this procedure shall enter into force for all States Parties 180 days after the date of notification by the Director-General of their approval unless another time period is recommended by the Executive Council or decided by the Conference.



**ARTICLE XVI****DURATION AND WITHDRAWAL**

1. This Convention shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention if it decides that extraordinary events, related to the subject-matter of this Convention, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal 90 days in advance to all other States Parties, the Executive Council, the Depositary and the United Nations Security Council. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.
3. The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law, particularly the Geneva Protocol of 1925.

**ARTICLE XVII****STATUS OF THE ANNEXES**

The Annexes form an integral part of this Convention. Any reference to this Convention includes the Annexes.

**ARTICLE XVIII****SIGNATURE**

This Convention shall be open for signature for all States before its entry into force.

**ARTICLE XIX****RATIFICATION**

This Convention shall be subject to ratification by States Signatories according to their respective constitutional processes.

**ARTICLE XX****ACCESSION**

Any State which does not sign this Convention before its entry into force may accede to it at any time thereafter.

**ARTICLE XXI****ENTRY INTO FORCE**

1. This Convention shall enter into force 180 days after the date of the deposit of the 65th instrument of ratification, but in no case earlier than two years after its opening for signature.
2. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the 30th day following the date of deposit of their instrument of ratification or accession.

**ARTICLE XXII****RESERVATIONS**

The Articles of this Convention shall not be subject to reservations. The Annexes of this Convention shall not be subject to reservations incompatible with its object and purpose.

## ARTICLE XXIII

## DEPOSITARY

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention and shall, *inter alia*:

(a) Promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession and the date of the entry into force of this Convention, and of the receipt of other notices;

(b) Transmit duly certified copies of this Convention to the Governments of all signatory and acceding States; and

(c) Register this Convention pursuant to Article 102 of the Charter of the United Nations.

## ARTICLE XXIV

## AUTHENTIC TEXTS

This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at Paris on the thirteenth day of January, one thousand nine hundred and ninety-three.

**ANNEX ON CHEMICALS****A. GUIDELINES FOR SCHEDULES OF CHEMICALS*****Guidelines for Schedule 1***

1. The following criteria shall be taken into account in considering whether a toxic chemical or precursor should be included in Schedule 1:

(a) It has been developed, produced, stockpiled or used as a chemical weapon as defined in Article II;

(b) It poses otherwise a high risk to the object and purpose of this Convention by virtue of its high potential for use in activities prohibited under this Convention because one or more of the following conditions are met:

(i) It possesses a chemical structure closely related to that of other toxic chemicals listed in Schedule 1, and has, or can be expected to have, comparable properties;

(ii) It possesses such lethal or incapacitating toxicity as well as other properties that would enable it to be used as a chemical weapon;

(iii) It may be used as a precursor in the final single technological stage of production of a toxic chemical listed in Schedule 1, regardless of whether this stage takes place in facilities, in munitions or elsewhere;

(c) It has little or no use for purposes not prohibited under this Convention.

***Guidelines for Schedule 2***

2. The following criteria shall be taken into account in considering whether a toxic chemical not listed in Schedule 1 or a precursor to a Schedule 1 chemical or to a chemical listed in Schedule 2, part A, should be included in Schedule 2 :

(a) It poses a significant risk to the object and purpose of this Convention because it possesses such lethal or incapacitating toxicity as well as other properties that could enable it to be used as a chemical weapon;

(b) It may be used as a precursor in one of the chemical reactions at the final stage of formation of a chemical listed in Schedule 1 or Schedule 2, part A;

(c) It poses a significant risk to the object and purpose of this Convention by virtue of its importance in the production of a chemical listed in Schedule 1 or Schedule 2, part A;

(d) It is not produced in large commercial quantities for purposes not prohibited under this Convention.

***Guidelines for Schedule 3***

3. The following criteria shall be taken into account in considering whether a toxic chemical or precursor, not listed in other Schedules, should be included in Schedule 3:

(a) It has been produced, stockpiled or used as a chemical weapon;

(b) It poses otherwise a risk to the object and purpose of this Convention because it possesses such lethal or incapacitating toxicity as well as other properties that might enable it to be used as a chemical weapon;

(c) It poses a risk to the object and purpose of this Convention by virtue of its importance in the production of one or more chemicals listed in Schedule 1 or Schedule 2, Part B;

(d) It may be produced in large commercial quantities for purposes not prohibited under this Convention.

**B. SCHEDULES OF CHEMICALS**

The following Schedules list toxic chemicals and their precursors. For the purpose of implementing this Convention, these Schedules identify chemicals for the application of verification measures according to the provisions of the Verification Annex. Pursuant to Article II, sub-paragraph 1(a), these Schedules do not constitute a definition of chemical weapons.

(Whenever reference is made to groups of dialkylated chemicals, followed by a list of alkyl groups in parentheses, all chemicals possible by all possible combinations of alkyl groups listed in the parentheses are considered as listed in the respective Schedule as long as they are not explicitly exempted. A chemical marked "\*" on Schedule 2, part A, is subject to special thresholds for declaration and verification, as specified in Part VII of the Verification Annex.)

## Schedule 1

(CAS registry number)

## A. Toxic chemicals:

- (1) O-Alkyl ( $\leq C_{10}$ , incl. cycloalkyl) alkyl  
(Me, Et, n-Pr or i-Pr)-phosphonofluoridates  
e.g. Sarin: O-Isopropyl methylphosphonofluoridate (107-44-8)  
Soman: O-Pinacolyl methylphosphonofluoridate (96-64-0)
- (2) O-Alkyl ( $\leq C_{10}$ , incl. cycloalkyl) N,N-dialkyl  
(Me, Et, n-Pr or i-Pr) phosphoramidocyanidates  
e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate (77-81-6)
- (3) O-Alkyl (H or  $\leq C_{10}$ , incl. cycloalkyl) S-2 dialkyl  
(Me, Et, n-Pr or i-Pr)-aminoethyl alkyl  
(Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts  
e.g. VX: O-Ethyl S-2 diisopropylaminoethyl methyl phosphonothiolate (50782-69-9)
- (4) Sulfur mustards:  
2-Chloroethylchloromethylsulfide (2625-76-5)  
Mustard gas: Bis(2-chloroethyl) sulfide (505-60-2)  
Bis(2-chloroethylthio) methane (63869-13-6)  
Sesquimustard: 1,2-Bis (2-chloroethylthio) ethane (3563-36-8)  
1,3-Bis(2-chloroethylthio)-n-propane (63905-10-2)  
1,4-Bis(2-chloroethylthio)-n-butane (142868-93-7)  
1,5-Bis(2-chloroethylthio)-n-pentane (142868-94-8)  
Bis(2-chloroethylthiomethyl) ether (63918-90-1)  
O-Mustard: Bis(2-chloroethylthioethyl) ether (63918-89-8)
- (5) Lewisites:  
Lewisite 1: 2-Chlorovinylchloroarsine (541-25-3)  
Lewisite 2: Bis(2-chlorovinyl)chloroarsine (40334-69-8)  
Lewisite 3: Tris(2-chlorovinyl)arsine (40334-70-1)
- (6) Nitrogen mustards:  
HN1: Bis(2-chloroethyl)ethylamine (538-07-8)  
HN2: Bis(2-chloroethyl)methylamine (51-75-2)  
HN3: Tris(2-chloroethyl)amine (555-77-1)
- (7) Saxitoxin (35523-89-8)
- (8) Ricin (9009-86-3)

## B. Precursors:

- (9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides  
e.g. DF: Methylphosphonyldifluoride (676-99-3)



- (10) O-Alkyl (H or  $\leq C_{10}$ , incl. cycloalkyl) O-2-dialkyl  
(Me, Et, n-Pr or i-Pr)-aminoethyl alkyl  
(Me, Et, n-Pr or i-Pr) phosphonites and  
corresponding alkylated or protonated salts  
e.g. QL: O-Ethyl O-2-diisopropylaminoethyl  
methylphosphonite (57856-11-8)
- (11) Chlorosarin: O-Isopropyl methylphosphonochloridate (1445-76-7)
- (12) Chlorosoman: O-Pinacolyl methylphosphonochloridate (7040-57-5)

## Schedule 2

## A. Toxic chemicals:

- (1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl]  
phosphorothiolate (78-53-5)  
and corresponding alkylated or protonated salts
- (2) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene (382-21-8)
- (3) BZ: 3-Quinuclidinyl benzilate (\*) (6581-06-2)

## B. Precursors:

- (4) Chemicals, except for those listed in Schedule 1,  
containing a phosphorus atom to which is bonded  
one methyl, ethyl or propyl (normal or iso) group  
but not further carbon atoms,  
e.g. Methylphosphonyl dichloride (676-97-1)  
Dimethyl methylphosphonate (756-79-6)  
Exemption: Fonofos: O-Ethyl S-phenyl  
ethylphosphonothiolothionate (944-22-9)
- (5) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides
- (6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl  
(Me, Et, n-Pr or i-Pr)-phosphoramidates
- (7) Arsenic trichloride (7784-34-1)
- (8) 2,2-Diphenyl-2-hydroxyacetic acid (76-93-7)
- (9) Quinuclidin-3-ol (1619-34-7)
- (10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyle-2-chlorides  
and corresponding protonated salts
- (11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols  
and corresponding protonated salts  
Exemptions: N,N-Dimethylaminoethanol (108-01-0)  
and corresponding protonated salts  
N,N-Diethylaminoethanol (100-37-8)  
and corresponding protonated salts
- (12) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols  
and corresponding protonated salts
- (13) Thiodiglycol: Bis(2-hydroxyethyl)sulfide (111-48-8)
- (14) Pinacolyl alcohol: 3,3-Dimethylbutan-2-ol (464-07-3)

*Schedule 3***A. Toxic chemicals:**

- |   |            |
|---|------------|
| (1) Phosgene: Carbonyl dichloride       | (75-44-5)  |
| (2) Cyanogen chloride                   | (506-77-4) |
| (3) Hydrogen cyanide                    | (74-90-8)  |
| (4) Chloropicrin: Trichloronitromethane | (76-06-2)  |

**B. Precursors:**

- |                              |              |
|------------------------------|--------------|
| (5) Phosphorus oxychloride   | (10025-87-3) |
| (6) Phosphorus trichloride   | (7719-12-2)  |
| (7) Phosphorus pentachloride | (10026-13-8) |
| (8) Trimethyl phosphite      | (121-45-9)   |
| (9) Triethyl phosphite       | (122-52-1)   |
| (10) Dimethyl phosphite      | (868-85-9)   |
| (11) Diethyl phosphite       | (762-04-9)   |
| (12) Sulfur monochloride     | (10025-67-9) |
| (13) Sulfur dichloride       | (10545-99-0) |
| (14) Thionyl chloride        | (7719-09-7)  |
| (15) Ethyldiethanolamine     | (139-87-7)   |
| (16) Methyldiethanolamine    | (105-59-9)   |
| (17) Triethanolamine         | (102-71-6)   |

**ANNEX ON IMPLEMENTATION AND VERIFICATION  
("VERIFICATION ANNEX")**

**PART I**

**DEFINITIONS**

1. "Approved Equipment" means the devices and instruments necessary for the performance of the inspection team's duties that have been certified by the Technical Secretariat in accordance with regulations prepared by the Technical Secretariat pursuant to Part II, paragraph 27 of this Annex. Such equipment may also refer to the administrative supplies or recording materials that would be used by the inspection team.

2. "Building" as referred to in the definition of chemical weapons production facility in Article II comprises specialized buildings and standard Buildings:

(a) "Specialized Building" means:

(i) Any building, including underground structures, containing specialized equipment in a production or filling configuration;

(ii) Any building, including underground structures, which has distinctive features which distinguish it from buildings normally used for chemical production or filling activities not prohibited under this Convention.

(b) "Standard Building" means any building, including underground structures, constructed to prevailing industry standards for facilities not producing any chemical specified in Article II, paragraph 8 (a) (i), or corrosive chemicals.

3. "Challenge Inspection" means the inspection of any facility or location in the territory or in any other place under the jurisdiction or control of a State Party requested by another State Party pursuant to Article IX, paragraphs 8 to 25.

4. "Discrete Organic Chemical" means any chemical belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates, identifiable by chemical name, by structural formula, if known, and by Chemical Abstracts Service registry number, if assigned.

5. "Equipment" as referred to in the definition of chemical weapons production facility in Article II comprises specialized equipment and standard equipment.

(a) "Specialized Equipment" means:

(i) The main production train, including any reactor or equipment for product synthesis, separation or purification, any equipment used directly for heat transfer in the final technological stage, such as in reactors or in product separation, as well as any other equipment which has been in contact with any chemical specified in Article II, paragraph 8 (a) (i), or would be in contact with such a chemical if the facility were operated;

(ii) Any chemical weapon filling machines;

(iii) Any other equipment specially designed, built or installed for the operation of the facility as a chemical weapons production facility, as distinct from a facility constructed according to prevailing commercial industry standards for facilities not producing any chemical specified in Article II, paragraph 8 (a) (i), or corrosive chemicals, such as: equipment made of high-nickel alloys or other special corrosion-resistant material; special equipment for waste control, waste treatment, air filtering, or solvent recovery; special containment enclosures and safety shields; non-standard laboratory equipment used to analyse toxic chemicals for chemical weapons purposes; custom-designed process control panels; or dedicated spares for specialized equipment.

(b) "Standard Equipment" means:

(i) Production equipment which is generally used in the chemical industry and is not included in the types of specialized equipment;

(ii) Other equipment commonly used in the chemical industry, such as: fire-fighting equipment; guard and security/safety surveillance equipment; medical facilities, laboratory facilities; or communications equipment.

6. "Facility" in the context of Article VI means any of the industrial sites as defined below ("plant site", "plant" and "unit"):

(a) "Plant Site" (Works, Factory) means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as:

(i) Administration and other offices;

(ii) Repair and maintenance shops;

(iii) Medical centre;

(iv) Utilities;

(v) Central analytical laboratory;

(vi) Research and development laboratories;

(vii) Central effluent and waste treatment area; and

(viii) Warehouse storage.

(b) "Plant" (Production facility, Workshop) means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

(i) Small administrative section;

(ii) Storage/handling areas for feedstock and products;

(iii) Effluent/waste handling/treatment area;

(iv) Control/analytical laboratory;

(v) First aid service/related medical section; and

(vi) Records associated with the movement into, around and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

(c) "Unit" (Production unit, Process unit) means the combination of those items of equipment, including vessels and vessel set up, necessary for the production, processing or consumption of a chemical.

7. "Facility agreement" means an agreement or arrangement between a State Party and the Organization relating to a specific facility subject to on-site verification pursuant to Articles IV, V and VI.

8. "Host State" means the State on whose territory lie facilities or areas of another State, Party to this Convention, which are subject to inspection under this Convention.

9. "In-Country Escort" means individuals specified by the inspected State Party and, if appropriate, by the Host State, if they so wish, to accompany and assist the inspection team during the in-country period.

10. "In-Country Period" means the period from the arrival of the inspection team at a point of entry until its departure from the State at a point of entry.

11. "Initial Inspection" means the first on-site inspection of facilities to verify declarations submitted pursuant to Articles III, IV, V and VI and this Annex.

12. "Inspected State Party" means the State Party on whose territory or in any other place under its jurisdiction or control an inspection pursuant to this Convention takes place,



or the State Party whose facility or area on the territory of a Host State is subject to such an inspection; it does not, however, include the State Party specified in Part II, paragraph 21 of this Annex.

13. "Inspection Assistant" means an individual designated by the Technical Secretariat as set forth in Part II, Section A, of this Annex to assist inspectors in an inspection or visit, such as medical, security and administrative personnel and interpreters.

14. "Inspection Mandate" means the instructions issued by the Director-General to the inspection team for the conduct of a particular inspection.

15. "Inspection Manual" means the compilation of additional procedures for the conduct of inspections developed by the Technical Secretariat.

16. "Inspection Site" means any facility or area at which an inspection is carried out and which is specifically defined in the respective facility agreement or inspection request or mandate or inspection request as expanded by the alternative or final perimeter.

17. "Inspection Team" means the group of inspectors and inspection assistants assigned by the Director-General to conduct a particular inspection.

18. "Inspector" means an individual designated by the Technical Secretariat according to the procedures as set forth in Part II, Section A, of this Annex, to carry out an inspection or visit in accordance with this Convention.

19. "Model Agreement" means a document specifying the general form and content for an agreement concluded between a State Party and the Organization for fulfilling the verification provisions specified in this Annex,

20. "Observer" means a representative of a requesting State Party or a third State Party to observe a challenge inspection.

21. "Perimeter" in case of challenge inspection means the external boundary of the inspection site, defined by either geographic coordinates or description on a map:

(a) "Requested Perimeter" means the inspection site perimeter as specified in conformity with Part X, paragraph 8, of this Annex;

(b) "Alternative Perimeter" means the inspection site perimeter as specified, alternatively to the requested perimeter, by the inspected State Party; it shall conform to the requirements specified in Part X, paragraph 17, of this Annex;

(c) "Final Perimeter" means the final inspection site perimeter as agreed in negotiations between the inspection team and the inspected State Party, in accordance with Part X, paragraphs 16 to 21, of this Annex;

(d) "Declared Perimeter" means the external boundary of the facility declared pursuant to Articles III, IV, V and VI.

22. "Period of Inspection", for the purposes of Article IX, means the period of time from provision of access to the inspection team to the inspection site until its departure from the inspection site, exclusive of time spent on briefings before and after the verification activities.

23. "Period of Inspection", for the purposes of Articles IV, V and VI, means the period of time from arrival of the inspection team at the inspection site until its departure from the inspection site, exclusive of time spent on briefings before and after the verification activities.

24. "Point of Entry"/"Point of Exit" mean a location designated for the in-country arrival of inspection teams for inspections pursuant to this Convention or for their departure after completion of their mission.

25. "Requesting State Party" means a State Party which has requested a challenge inspection pursuant to Article IX.

26. "Tonne" means metric ton, i.e., 1,000 kg.

## PART II

## GENERAL RULES OF VERIFICATION

## A. DESIGNATION OF INSPECTORS AND INSPECTION ASSISTANTS

1. Not later than 30 days after entry into force of this Convention the Technical Secretariat shall communicate, in writing, to all States Parties the names, nationalities and ranks of the inspectors and inspection assistants proposed for designation, as well as a description of their qualifications and professional experiences.

2. Each State Party shall immediately acknowledge receipt of the list of inspectors and inspection assistants, proposed for designation communicated to it. The State Party shall inform the Technical Secretariat in writing of its acceptance of each inspector and inspection assistant, not later than 30 days after acknowledgment of receipt of the list. Any inspector and inspection assistant included in this list shall be regarded as designated unless a State Party, not later than 30 days after acknowledgment of receipt of the list, declares its non-acceptance in writing. The State Party may include the reason for the objection.

In the case of non-acceptance, the proposed inspector or inspection assistant shall not undertake or participate in verification activities on the territory or in any other place under the jurisdiction or control of the State Party which has declared its non-acceptance. The Technical Secretariat shall, as necessary, submit further proposals in addition to the original list.

3. Verification activities under this Convention shall only be performed by designated inspectors and inspection assistants.

4. Subject to the provisions of paragraph 5, a State Party has the right at any time to object to an inspector or inspection assistant who has already been designated. It shall notify the Technical Secretariat of its objection in writing and may include the reason for the objection. Such objection shall come into effect 30 days after receipt by the Technical Secretariat. The Technical Secretariat shall immediately inform the State Party concerned of the withdrawal of the designation of the inspector or inspection assistant.

5. A State Party that has been notified of an inspection shall not seek to have removed from the inspection team for that inspection any of the designated inspectors or inspection assistants named in the inspection team list.

6. The number of inspectors or inspection assistants accepted by and designated to a State Party must be sufficient to allow for availability and rotation of appropriate numbers of inspectors and inspection assistants.

7. If, in the opinion of the Director-General, the non-acceptance of proposed inspectors or inspection assistants impedes the designation of a sufficient number of inspectors or inspection assistants or otherwise hampers the effective fulfilment of the tasks of the Technical Secretariat, the Director-General shall refer the issue to the Executive Council.

8. Whenever amendments to the above-mentioned lists of inspectors and inspection assistants are necessary or requested, replacement inspectors and inspection assistants shall be designated in the same manner as set forth with respect to the initial list.

9. The members of the inspection team carrying out an inspection of a facility of a State Party located on the territory of another State Party shall be designated in accordance with the procedures set forth in this Annex as applied both to the inspected State Party and the Host State Party.

**B. PRIVILEGES AND IMMUNITIES**

10. Each State Party shall, not later than 30 days after acknowledgment of receipt of the list of inspectors and inspection assistants or of changes thereto, provide multiple entry/exit and/or transit visas and other such documents to enable each inspector or inspection assistant to enter and to remain on the territory of that State Party for the purpose of carrying out inspection activities. These documents shall be valid for at least two years after their provision to the Technical Secretariat.

11. To exercise their functions effectively, inspectors and inspection assistants shall be accorded privileges and immunities as set forth in sub-paragraphs (a) to (i). Privileges and immunities shall be granted to members of the inspection team for the sake of this Convention and not for the personal benefit of the individuals themselves. Such privileges and immunities shall be accorded to them for the entire period between arrival on and departure from the territory of the inspected State Party or Host State, and thereafter with respect to acts previously performed in the exercise of their official functions:

(a) The members of the inspection team shall be accorded the inviolability enjoyed by diplomatic agents pursuant to Article 29 of the Vienna Convention on Diplomatic Relations of 18 April, 1961;

(b) The living quarters and office premises occupied by the inspection team carrying out inspection activities pursuant to this Convention shall be accorded the inviolability and protection accorded to the premises of diplomatic agents pursuant to Article 30, paragraph 1, of the Vienna Convention on Diplomatic Relations.

(c) The papers and correspondence, including records, of the inspection team shall enjoy the inviolability accorded to all papers and correspondence of diplomatic agents pursuant to Article 30, paragraph 2, of the Vienna Convention on Diplomatic Relations. The inspection team shall have the right to use codes for their communications with the Technical Secretariat.

(d) Samples and approved equipment carried by members of the inspection team shall be inviolable subject to provisions contained in this Convention and exempt from all customs duties. Hazardous samples shall be transported in accordance with relevant regulations.

(e) The members of the inspection team shall be accorded the immunities accorded to diplomatic agents pursuant to Article 31, paragraphs 1, 2 and 3, of the Vienna Convention on Diplomatic Relations.

(f) The members of the inspection team carrying out prescribed activities pursuant to this Convention shall be accorded the exemption from dues and taxes accorded to diplomatic agents pursuant to Article 34 of the Vienna Convention on Diplomatic Relations.

(g) The members of the inspection team shall be permitted to bring into the territory of the inspected State Party or Host State Party, without payment of any customs duties or related charges, articles for personal use, with the exception of articles the import or export of which is prohibited by law or controlled by quarantine regulations.

(h) The members of the inspection team shall be accorded the same currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions.

(i) The members of the inspection team shall not engage in any professional or commercial activity for personal profit on the territory of the inspected State Party or the Host State.

12. When transiting the territory of non-inspected States Parties, the members of the inspection team shall be accorded the privileges and immunities enjoyed by diplomatic agents

pursuant to Article 40, paragraph 1, of the Vienna Convention on Diplomatic Relations. Papers and correspondence, including records, and samples and approved equipment, carried by them, shall be accorded the privileges and immunities set forth in paragraph 11 (c) and (d).

13. Without prejudice to their privileges and immunities the members of the inspection team shall be obliged to respect the laws and regulations of the inspected State Party or Host State and, to the extent that is consistent with the inspection mandate, shall be obliged not to interfere in the internal affairs of that State. If the inspected State Party or Host State Party considers that there has been an abuse of privileges and immunities specified in this Annex, consultations shall be held between the State Party and the Director-General to determine whether such an abuse has occurred and, if so determined, to prevent a repetition of such an abuse.

14. The immunity from jurisdiction of members of the inspection team may be waived by the Director-General in those cases when the Director-General is of the opinion that immunity would impede the course of justice and that it can be waived without prejudice to the implementation of the provisions of this Convention. Waiver must always be express.

15. Observers shall be accorded the same privileges and immunities accorded to inspectors pursuant to this section, except for those accorded pursuant to paragraph 11 (d).

### C. STANDING ARRANGEMENTS

#### *Points of entry*

16. Each State Party shall designate the points of entry and shall supply the required information to the Technical Secretariat not later than 30 days after this Convention enters into force for it. These points of entry shall be such that the inspection team can reach any inspection site from at least one point of entry within 12 hours. Locations of points of entry shall be provided to all State Parties by the Technical Secretariat.

17. Each State Party may change the points of entry by giving notice of such change to the Technical Secretariat. Changes shall become effective 30 days after the Technical Secretariat receives such notification to allow appropriate notification to all States Parties.

18. If the Technical Secretariat considers that there are insufficient points of entry for the timely conduct of inspections or that changes to the points of entry proposed by a State Party would hamper such timely conduct of inspections, it shall enter into consultations with the State Party concerned to resolve the problem.

19. In cases where facilities or areas of an inspected State Party are located on the territory of a Host State Party or where the access from the point of entry to the facilities or areas subject to inspection requires transit through the territory of another State Party, the inspected State Party shall exercise the rights and fulfil the obligations concerning such inspections in accordance with this Annex. The Host State Party shall facilitate the inspection of those facilities or areas and shall provide for the necessary support to enable the inspection team to carry out its tasks in a timely and effective manner. State Parties through whose territory transit is required to inspect facilities or areas of an inspected State Party shall facilitate such transit.

20. In cases where facilities or areas of an inspected State Party are located on the territory of a State not Party to this Convention, the inspected State Party shall take all necessary measures to ensure that inspections of those facilities or areas can be carried out in accordance with the provisions of this Annex. A State Party that has one or more facilities or areas on the territory of a State not Party to this Convention shall take all necessary measures to ensure acceptance by the Host State of inspectors and inspection assistants designated to that State Party. If an inspected State Party is unable to ensure access, it shall demonstrate that it took all necessary measures to ensure access.



21. In cases where the facilities or areas sought to be inspected are located on the territory of a State Party, but in a place under the jurisdiction or control of a State not Party to this Convention, the State Party shall take all necessary measures as would be required of an inspected State Party and a Host State Party to ensure that inspections of such facilities or areas can be carried out in accordance with the provisions of this Annex. If the State Party is unable to ensure access to those facilities or areas, it shall demonstrate that it took all necessary measures to ensure access. This paragraph shall not apply where the facilities or areas sought to be inspected are those of the State Party.

*Arrangements for use of non-scheduled aircraft*

22. For inspections pursuant to Article IX and for other inspections where timely travel is not feasible using scheduled commercial transport, an inspection team may need to utilize aircraft owned or chartered by the Technical Secretariat. Not later than 30 days after this Convention enters into force for it, each State Party shall inform the Technical Secretariat of the standing diplomatic clearance number for non-scheduled aircraft transporting inspection teams and equipments necessary for inspection into and out of the territory in which an inspection site is located. Aircraft routings to and from the designated point of entry shall be along established international airways that are agreed upon between the States Parties and the Technical Secretariat as the basis for such diplomatic clearance.

23. When a non-scheduled aircraft is used, the Technical Secretariat shall provide the inspected State Party with a flight plan, through the National Authority, for the aircraft's flight from the last airfield prior to entering the airspace of the State in which the inspection site is located to the point of entry, not less than six hours before the scheduled departure time from that airfield. Such a plan shall be filed in accordance with the procedures of the International Civil Aviation Organization applicable to civil aircraft. For its owned or chartered flights, the Technical Secretariat shall include in the remarks section of each flight plan the standing diplomatic clearance number and the appropriate notation identifying the aircraft as an inspection aircraft.

24. Not less than three hours before the scheduled departure of the inspection team from the last airfield prior to entering the airspace of the State in which the inspection is to take place, the inspected State Party or Host State Party shall ensure that the flight plan filed in accordance with paragraph 23 is approved so that the inspection team may arrive at the point of entry by the estimated arrival time.

25. The inspected State Party shall provide parking, security protection, servicing and fuel as required by the Technical Secretariat for the aircraft of the inspection team at the point of entry when such aircraft is owned or chartered by the Technical Secretariat. Such aircraft shall not be liable for landing fees, departure tax, and similar charges. The Technical Secretariat shall bear the cost of such fuel, security protection and servicing.

*Administrative arrangements*

26. The inspected State Party shall provide or arrange for the amenities necessary for the inspection team such as communication means, interpretation services to the extent necessary for the performance of interviewing and other tasks, transportation, working space, lodging, meals and medical care. In this regard, the inspected State Party shall be reimbursed by the Organization for such costs incurred by the inspection team.

*Approved equipment*

27. Subject to paragraph 29, there shall be no restriction by the inspected State Party on the inspection team bringing on to the inspection site such equipment, approved in accordance with paragraph 28, which the Technical Secretariat has determined to be necessary to fulfil the inspection requirements. The Technical Secretariat shall prepare and, as appropriate, update a list of approved equipment, which may be needed for the purposes described above, and regulations governing such equipment which shall be in accordance with this Annex. In establishing the list of approved equipment and these

regulations, the Technical Secretariat shall ensure that safety considerations for all the types of facilities at which such equipment is likely to be used, are taken fully into account. A list of approved equipment shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21(i).

28. The equipment shall be in the custody of the Technical Secretariat and be designated, calibrated and approved by the Technical Secretariat. The Technical Secretariat shall, to the extent possible, select that equipment which is specifically designed for the specific kind of inspection required. Designated and approved equipment shall be specifically protected against unauthorized alteration.

29. The inspection State Party shall have the right, without prejudice to the prescribed time-frames, to inspect the equipment in the presence of inspection team members at the point of entry, i.e., to check the identity of the equipment brought in or removed from the territory of the inspected State Party or the Host State. To facilitate such identification, the Technical Secretariat shall attach documents and devices to authenticate its designation and approval of the equipment. The inspection of the equipment shall also ascertain to the satisfaction of the inspected State Party that the equipment meets the description of the approved equipment for the particular type of inspection. The inspected State Party may exclude equipment not meeting that description or equipment without the above-mentioned authentication documents and devices. Procedures for the inspection of equipment shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21(i).

30. In cases where the inspection team finds it necessary to use equipment available on site not belonging to the Technical Secretariat and requests the inspected State Party to enable the team to use such equipment, the inspected State Party shall comply with the request to the extent it can.

#### **D. PRE-INSPECTION ACTIVITIES**

##### *Notification*

31. The Director-General shall notify the State Party before the planned arrival of the inspection team at the point of entry and within the prescribed time-frames, where specified, of its intention to carry out an inspection.

32. Notifications made by the Director-General shall include the following information:

- (a) The type of inspection;
- (b) The point of entry;
- (c) The date and estimated time of arrival at the point of entry;
- (d) The means of arrival at the point of entry;
- (e) The site to be inspected;
- (f) The names of inspectors and inspection assistants;
- (g) If appropriate, aircraft clearance for special flights.

33. The inspected State Party shall acknowledge the receipt of a notification by the Technical Secretariat of an intention to conduct an inspection, not later than one hour after receipt of such notification.

34. In the case of an inspection of a facility of a State Party located on the territory of another State Party, both States Parties shall be simultaneously notified in accordance with paragraphs 31 and 32.

##### *Entry into the territory of the inspected State Party or Host State and transfer to the inspection site*

35. The inspected State Party or Host State Party which has been notified of the arrival

of an inspection team, shall ensure its immediate entry into the territory and shall through an in-country escort or by other means do everything in its power to ensure the safe conduct of the inspection team and its equipment and supplies, from its point of entry to the inspection site(s) and to a point of exit.

36. The inspected State Party or Host State Party shall, as necessary, assist the inspection team in reaching the inspection site not later than 12 hours after the arrival at the point of entry.

#### *Pre-inspection briefing*

37. Upon arrival at the inspection site and before the commencement of the inspection, the inspection team shall be briefed by facility representatives, with the aid of maps and other documentation as appropriate, on the facility, the activities carried out there, safety measures and administrative and logistic arrangements necessary for the inspection. The time spent for the briefing shall be limited to the minimum necessary and in any event not exceed three hours.

### **E. CONDUCT OF INSPECTIONS**

#### *General rules*

38. The members of the inspection team shall discharge their functions in accordance with the provisions of this Convention, as well as rules established by the Director-General and facility agreements concluded between States Parties and the Organisation.

39. The inspection team shall strictly observe the inspection mandate issued by the Director-General. It shall refrain from activities going beyond this mandate.

40. The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party or Host State and disturbance to the facility or area inspected. The inspection team shall avoid unnecessary hampering or delaying the operation of a facility and avoid affecting its safety. In particular, the inspection team shall not operate any facility. If inspectors consider that, to fulfil their mandate, particular operations should be carried out in a facility, they shall request the designated representative of the inspected facility to have them performed. The representative shall carry out the request to the extent possible.

41. In the performance of their duties on the territory of an inspected State Party or Host State, the members of the inspection team shall, if the inspected State Party so requests, be accompanied by representatives of the inspected State Party, but the inspection team must not thereby be delayed or otherwise hindered in the exercise of its functions.

42. Detailed procedures for the conduct of inspections shall be developed for inclusion in the inspection manual by the Technical Secretariat, taking into account guidelines to be considered and approved by the Conference pursuant to Article VIII, paragraph 21(i).

#### *Safety*

43. In carrying out their activities, inspectors and inspection assistants shall observe safety regulations established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety. In order to implement these requirements, appropriate detailed procedures shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21(i).

#### *Communications*

44. Inspectors shall have the right throughout the in-country period to communicate with the Headquarters of the Technical Secretariat. For this purpose they may use their own, duly certified, approved equipment and may request that the inspected State Party or Host State Party provide them with access to other telecommunications. The inspection team shall have the right to use its own two-way system of radio communications between personnel patrolling the perimeter and other members of the inspection team.

*Inspection team and inspected State Party rights*

45. The inspection team shall, in accordance with the relevant Articles and Annexes of this Convention as well as with facility agreements and procedures set forth in the inspection manual, have the right to unimpeded access to the inspection site. The items to be inspected will be chosen by the inspectors.

46. Inspectors shall have the right to interview any facility personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts. Inspectors shall only request information and data which are necessary for the conduct of the inspection, and the inspected State Party shall furnish such information upon request. The inspected State Party shall have the right to object to questions posed to the facility personnel if those questions are deemed not relevant to the inspection. If the head of the inspection team objects and states their relevance, the questions shall be provided in writing to the inspected State Party for reply. The inspection team may note any refusal to permit interviews or to allow questions to be answered and any explanations given, in that part of the inspection report that deals with the cooperation of the inspected State Party.

47. Inspectors shall have the right to inspect documentation and records they deem relevant to the conduct of their mission.

48. Inspectors shall have the right to have photographs taken at their request by representatives of the inspected State Party or of the inspected facility. The capability to take instant development photographic prints shall be available. The inspection team shall determine whether photographs conform to those requested and, if not, repeat photographs shall be taken. The inspection team and the inspected State Party shall each retain one copy of every photograph.

49. The representatives of the inspected State Party shall have the right to observe all verification activities carried out by the inspection team.

50. The inspected State Party shall receive copies, at its request, of the information and data gathered about its facility(ies) by the Technical Secretariat.

51. Inspectors shall have the right to request clarifications in connection with ambiguities that arise during an inspection. Such requests shall be made promptly through the representative of the inspected State Party. The representative of the inspected State Party shall provide the inspection team, during the inspection, with such clarification as may be necessary to remove the ambiguity. If questions relating to an object or a building located within the inspection site are not resolved, the object or building shall, if requested, be photographed for the purpose of clarifying its nature and function. If the ambiguity cannot be removed during the inspection, the inspectors shall notify the Technical Secretariat immediately. The inspectors shall include in the inspection report any such unresolved question, relevant clarifications, and a copy of any photographs taken.

*Collection, handling and analysis of samples*

52. Representatives of the inspected State Party or of the inspected facility shall take samples at the request of the inspection team in the presence of inspectors. If so agreed in advance with the representatives of the inspected State Party or of the inspected facility, the inspection team may take samples itself.

53. Where possible, the analysis of samples shall be performed on-site. The inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it. At the request of the inspection team, the inspected State Party shall, in accordance with agreed procedures, provide assistance for the analysis of samples on-site. Alternatively, the inspection team may request that appropriate analysis on-site be performed in its presence.

54. The inspected State Party has the right to retain portions of all samples taken or take duplicate samples and be present when samples are analysed on-site.



55. The inspection team shall, if it deems it necessary, transfer samples for analysis off-site at laboratories designated by the Organization.

56. The Director-General shall have the primary responsibility for the security, integrity and preservation of samples and for ensuring that the confidentiality of samples transferred for analysis off-site is protected. The Director-General shall do so in accordance with procedures, to be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i), for inclusion in the inspection manual. He shall:

(a) Establish a stringent regime governing the collection, handling, transport and analysis of samples;

(b) Certify the laboratories designated to perform different types of analysis;

(c) Oversee the standardization of equipment and procedures at these designated laboratories, mobile analytical equipment and procedures, and monitor quality control and overall standards in relation to the certification of these laboratories, mobile equipment and procedures; and

(d) Select from among the designated laboratories those which shall perform analytical or other functions in relation to specific investigations.

57. When off-site analysis is to be performed, samples shall be analysed in at least two designated laboratories. The Technical Secretariat shall ensure the expeditious processing of the analysis. The samples shall be accounted for by the Technical Secretariat and any unused samples or portions thereof shall be returned to the Technical Secretariat.

58. The Technical Secretariat shall compile the results of the laboratory analysis of samples relevant to compliance with this Convention and include them in the final inspection report. The Technical Secretariat shall include in the report detailed information concerning the equipment and methodology employed by the designated laboratories.

#### *Extension of inspection duration*

59. Periods of inspection may be extended by agreement with the representative of the inspected State Party.

#### *Debriefing*

60. Upon completion of an inspection the inspection team shall meet with representatives of the inspected State Party and the personnel responsible for the inspection site to review the preliminary findings of the inspection team and to clarify any ambiguities. The inspection team shall provide to the representatives of the inspected State Party its preliminary findings in written form according to a standardized format, together with a list of any samples and copies of written information and data gathered and other material to be taken off-site. The document shall be signed by the head of the inspection team. In order to indicate that he has taken notice of the contents of the document, the representative of the inspected State Party shall countersign the document. This meeting shall be completed not later than 24 hours after the completion of the inspection.

#### **F. DEPARTURE**

61. Upon completion of the post-inspection procedures, the inspection team shall leave, as soon as possible, the territory of the inspected State Party or the Host State.

#### **G. REPORTS**

62. Not later than 10 days after the inspection, the inspectors shall prepare a factual, final report on the activities conducted by them and on their findings. It shall only contain facts relevant to compliance with this Convention, as provided for under the inspection mandate. The report shall also provide information as to the manner in which the State Party inspected cooperated with the inspection team. Differing observations made by inspectors may be attached to the report. The report shall be kept confidential.

63. The final report shall immediately be submitted to the inspected State Party. Any written comments, which the inspected State Party may immediately make on its findings shall be annexed to it. The final report together with annexed comments made by the inspected State Party shall be submitted to the Director-General not later than 30 days after the inspection.

64. Should the report contain uncertainties, or should cooperation between the National Authority and the inspectors not measure up to the standards required, the Director-General shall approach the State Party for clarification.

65. If the uncertainties cannot be removed or the facts established are of a nature to suggest that obligations undertaken under this Convention have not been met, the Director-General shall inform the Executive Council without delay.

#### **II. APPLICATION OF GENERAL PROVISIONS**

66. The provisions of this Part shall apply to all inspections conducted pursuant to this Convention, except where the provisions of this Part differ from the provisions set forth for specific types of inspections in Parts III to XI of this Annex, in which case the latter provisions shall take precedence.

**PART III****GENERAL PROVISIONS FOR VERIFICATION MEASURES PURSUANT TO  
ARTICLES IV, V AND VI, PARAGRAPH 3****A. INITIAL INSPECTIONS AND FACILITY AGREEMENTS**

1. Each declared facility subject to on-site inspection pursuant to Articles IV, V and VI, paragraph 3, shall receive an initial inspection promptly after the facility is declared. The purpose of this inspection of the facility shall be to verify information provided and to obtain any additional information needed for planning future verification activities at the facility, including on-site inspections and continuous monitoring with on-site instruments, and to work on the facility agreements.

2. States Parties shall ensure that the verification of declarations and the initiation of the systematic verification measures can be accomplished by the Technical Secretariat at all facilities within the established time-frames after this Convention enters into force for them.

3. Each State Party shall conclude a facility agreement with the Organization for each facility declared and subject to on-site inspection pursuant to Articles IV, V and VI, paragraph 3.

4. Facility agreements shall be completed not later than 180 days after this Convention enters into force for the State Party or after the facility has been declared for the first time, except for a chemical weapons destruction facility to which paragraphs 5 to 7 shall apply.

5. In the case of a chemical weapons destruction facility that begins operations more than one year after this Convention enters into force for the State Party, the facility agreement shall be completed not less than 180 days before the facility begins operation.

6. In the case of a chemical weapons destruction facility that is in operation when this Convention enters into force for the State Party, or begins operation not later than one year thereafter, the facility agreement shall be completed not later than 210 days after this Convention enters into force for the State Party, except that the Executive Council may decide that transitional verification arrangements, approved in accordance with Part IV (A), paragraph 51, of this Annex and including a transitional facility agreement, provisions for verification through on-site inspection and monitoring with on-site instruments, and the time-frame for application of the arrangements, are sufficient.

7. In the case of a facility, referred to in paragraph 6, that will cease operations not later than two years after this Convention enters into force for the State Party, the Executive Council may decide that transitional verification arrangements, approved in accordance with Part IV (A), paragraph 51, of this Annex and including a transitional facility agreement, provisions for verification through on-site inspection and monitoring with on-site instruments, and the time-frame for application of the arrangements, are sufficient.

8. Facility agreements shall be based on models for such agreements and provide for detailed arrangements which shall govern inspections at each facility. The model agreements shall include provisions to take into account future technological developments and shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i).

9. The Technical Secretariat may retain at each site a sealed container for photographs, plans and other information that it may wish to refer to in the course of subsequent inspections.

**B. STANDING ARRANGEMENTS**

10. Where applicable, the Technical Secretariat shall have the right to have continuous monitoring instruments and systems and seals installed and to use them, in conformity with the relevant provisions in this Convention and the facility agreements between States Parties and the Organization.

11. The inspected State Party shall, in accordance with agreed procedures, have the right to inspect any instrument used or installed by the inspection team and to have it tested in the presence of representatives of the inspected State Party. The inspection team shall have the right to use the instruments that were installed by the inspected State Party for its own monitoring of the technological process of the destruction of chemical weapons. To this end, the inspection team shall have the right to inspect those instruments that it intends to use for purposes of verification of the destruction of chemical weapons and to have them tested in its presence.

12. The inspected State Party shall provide the necessary preparation and support for the establishment of continuous monitoring instruments and systems.

13. In order to implement paragraphs 11 and 12, appropriate detailed procedures shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i).

14. The inspected State Party shall immediately notify the Technical Secretariat if an event occurs or may occur at a facility where monitoring instruments are installed, which may have an impact on the monitoring system. The inspected State Party shall coordinate subsequent actions with the Technical Secretariat with a view to restoring the operation of the monitoring system and establishing interim measures, if necessary, as soon as possible.

15. The inspection team shall verify during each inspection that the monitoring system functions correctly and that emplaced seals have not been tampered with. In addition, visits to service the monitoring system may be required to perform any necessary maintenance or replacement of equipment, or to adjust the coverage of the monitoring system as required.

16. If the monitoring system indicates any anomaly, the Technical Secretariat shall immediately take action to determine whether this resulted from equipment malfunction or activities at the facility. If, after this examination, the problem remains unresolved, the Technical Secretariat shall immediately ascertain the actual situation, including through immediate on-site inspection of, or visit to, the facility if necessary. The Technical Secretariat shall report any such problem immediately after its detection to the inspected State Party which shall assist in its resolution.

**C. PRE-INSPECTION ACTIVITIES**

17. The inspected State Party shall, except as specified in paragraph 18, be notified of inspections not less than 24 hours in advance of the planned arrival of the inspection team at the point of entry.

18. The inspected State Party shall be notified of initial inspections not less than 72 hours in advance of the estimated time of arrival of the inspection team at the point of entry.



## PART IV(A)

DESTRUCTION OF CHEMICAL WEAPONS AND ITS VERIFICATION  
PURSUANT TO ARTICLE IV

## A. DECLARATIONS

*Chemical weapons*

1. The declaration of chemical weapons by a State Party pursuant to Article III, paragraph 1 (a) (ii), shall include the following:

- (a) The aggregate quantity of each chemical declared;
- (b) The precise location of each chemical weapons storage facility, expressed by:
  - (i) Name;
  - (ii) Geographical coordinates; and
  - (iii) A detailed site diagram, including a boundary map and the location of bunkers/storage areas within the facility;
- (c) The detailed inventory for each chemical weapons storage facility including:
  - (i) Chemicals defined as chemical weapons in accordance with Article II;
  - (ii) Unfilled munitions, sub-munitions, devices and equipment defined as chemical weapons;
  - (iii) Equipment specially designed for use directly in connection with the employment of munitions, sub-munitions, devices or equipment specified in sub-paragraph (ii);
  - (iv) Chemicals specifically designed for use directly in connection with the employment of munitions, sub-munitions, devices or equipment specified in sub-paragraph (ii).

2. For the declaration of chemicals referred to in paragraph 1 (c) (i) the following shall apply:

- (a) Chemicals shall be declared in accordance with the Schedules specified in the Annex on Chemicals;
- (b) For a chemical not listed in the Schedules in the Annex on Chemicals the information required for possible assignment of the chemical to the appropriate Schedule shall be provided, including the toxicity of the pure compound. For a precursor, the toxicity and identity of the principal final reaction product (s) shall be provided;
- (c) Chemicals, shall be identified by chemical name in accordance with current International Union of Pure and Applied Chemistry (IUPAC) nomenclature, structural formula and Chemical Abstracts Service registry number, if assigned. For a precursor, the toxicity and identity of the principal final reaction product(s) shall be provided;
- (d) In cases involving mixtures of two or more chemicals, each chemical shall be identified and the percentage of each shall be provided, and the mixture shall be declared under the category of the most toxic chemical. If a component of a binary chemical weapon consists of a mixture of two or more chemicals, each chemical shall be identified and the percentage of each provided;
- (e) Binary chemical weapons shall be declared under the relevant end product within the framework of the categories of chemical weapons referred to in para-

graph 16. The following supplementary information shall be provided for each type of binary chemical munition, device:

- (i) The chemical name of the toxic end-product;
- (ii) The chemical composition and quantity of each component;
- (iii) The actual weight ratio between the components;
- (iv) Which component is considered the key component;

(v) The projected quantity of the toxic end-product calculated on a stoichiometric basis from the key component, assuming 100 per cent. yield. A declared quantity (in tonnes) of the key component intended for a specific toxic end-product shall be considered equivalent to the quantity (in tonnes) of this toxic end-product calculated on a stoichiometric basis assuming 100 per cent. yield;

(f) For multicomponent chemical weapons, the declaration shall be analogous to that envisaged for binary chemical weapons;

(g) For each chemical the form of storage, i.e., munitions, sub-munitions, devices, equipment or bulk containers and other containers shall be declared. For each form of storage the following shall be listed:

- (i) Type;
- (ii) Size or calibre;
- (iii) Number of items; and
- (iv) Nominal weight of chemical fill per item;

(h) For each chemical the total weight present at the storage facility shall be declared;

(i) In addition, for chemicals stored in bulk, the percentage purity shall be declared, if known.

3. For each type of unfilled munitions, sub-munitions, devices or equipment, referred to in paragraph 1 (c) (ii), the information shall include:

- (a) The number of items;
- (b) The nominal fill volume per item;
- (c) The intended chemical fill.

*Declarations of chemical weapons pursuant to Article III, paragraph 1 (a) (iii)*

4. The declaration of chemical weapons pursuant to Article III, paragraph 1 (a) (iii), shall contain all information specified in paragraphs 1 to 3 above. It is the responsibility of the State Party on whose territory the chemical weapons are located to make appropriate arrangements with the other State to ensure that the declarations are made. If the State Party on whose territory the chemical weapons are located is not able to fulfil its obligations under this paragraph, it shall state the reasons therefor.

*Declarations of past transfers and receipts*

5. A State Party that has transferred or received chemical weapons since 1 January 1946 shall declare these transfers or receipts pursuant to Article III, paragraph 1 (a) (iv), provided the amount transferred or received exceeded 1 tonne per chemical per year in bulk and/or munition form. This declaration shall be made according to the inventory format specified in paragraphs 1 and 2. This declaration shall also indicate the supplier and recipient countries, the dates of the transfers or receipts and, as precisely as possible, the current location of the transferred items. When not all the specified information is available for transfers or receipts of chemical weapons for the period between 1 January 1946 and

1 January 1970, the State Party shall declare whatever information is still available to it and provide an explanation as to why it cannot submit a full declaration.

*Submission of the general plan for destruction of chemical weapons*

6. The general plan for destruction of chemical weapons submitted pursuant to Article III, paragraph 1 (a) (v), shall provide an overview of the entire national chemical weapons destruction programme of the State Party and information on the efforts of the State Party to fulfil the destruction requirements contained in this Convention. The plan shall specify:

(a) A general schedule for destruction, giving types and approximate quantities of chemical weapons planned to be destroyed in each annual destruction period for each existing chemical weapons destruction facility and, if possible, for each planned chemical weapons destruction facility;

(b) The number of chemical weapons destruction facilities existing or planned to be operated over the destruction period;

(c) For each existing or planned chemical weapons destruction facility :

(i) Name and location; and

(ii) The types and approximate quantities of chemical weapons, and the type (for example, nerve agent or blister agent) and approximate quantity of chemical fill, to be destroyed;

(d) The plans and programmes for training personnel for the operation of destruction facilities;

(e) The national standards for safety and emissions that the destruction facilities must satisfy;

(f) Information on the development of new methods for destruction of chemical weapons and on the improvement of existing methods;

(g) The cost estimates for destroying the chemical weapons; and

(h) Any issues which could adversely impact on the national destruction programme.

**B. MEASURES TO SECURE THE STORAGE FACILITY AND  
STORAGE FACILITY PREPARATION**

7. Not later than when submitting its declaration of chemical weapons, a State Party shall take such measures as it considers appropriate to secure its storage facilities and shall prevent any movement of its chemical weapons out of the facilities, except their removal for destruction.

8. A State Party shall ensure that chemical weapons at its storage facilities are configured to allow ready access for verification in accordance with paragraphs 37 to 49.

9. While a storage facility remains closed for any movement of chemical weapons out of the facility other than their removal for destruction, a State Party may continue at the facility standard maintenance activities, including standard maintenance of chemical weapons; safety monitoring and physical security activities; and preparation of chemical weapons for destruction.

10. Maintenance activities of chemical weapons shall not include:

(a) Replacement of agent or of munition bodies;

(b) Modification of the original characteristics of munitions, or parts or components thereof.

11. All maintenance activities shall be subject to monitoring by the Technical Secretariat.

**C. DESTRUCTION***Principles and methods for destruction of chemical weapons*

12. "Destruction of chemical weapons" means a process by which chemicals are converted in an essentially irreversible way to a form unsuitable for production of chemical weapons, and which in an irreversible manner renders munitions and other devices unusable as such.

13. Each State Party shall determine how it shall destroy chemical weapons, except that the following processes may not be used: dumping in any body of water, land burial or open-pit burning. It shall destroy chemical weapons only at specifically designated and appropriately designed and equipped facilities.

14. Each State Party shall ensure that its chemical weapons destruction facilities are constructed and operated in a manner to ensure the destruction of the chemical weapons; and that the destruction process can be verified under the provisions of this Convention.

*Order of destruction*

15. The order of destruction of chemical weapons is based on the obligations specified in Article I and the other Articles, including obligations regarding systematic on-site verification. It takes into account interests of States Parties for undiminished security during the destruction period; confidence-building in the early part of the destruction stage; gradual acquisition of experience in the course of destroying chemical weapons; and applicability irrespective of the actual composition of the stockpiles and the methods chosen for the destruction of the chemical weapons. The order of destruction is based on the principle of levelling out.

16. For the purpose of destruction, chemical weapons declared by each State Party shall be divided into three categories:

Category 1: Chemical weapons on the basis of Schedule 1 chemicals and their parts and components;

Category 2: Chemical weapons on the basis of all other chemicals and their parts and components;

Category 3: Unfilled munitions and devices, and equipment specifically designed for use directly in connection with employment of chemical weapons.

17. A State Party shall start :

(a) The destruction of Category 1 chemical weapons not later than two years after this Convention enters into force for it, and shall complete the destruction not later than ten years after entry into force of this Convention. A State Party shall destroy chemical weapons in accordance with the following destruction deadlines:

(i) Phase 1—Not later than two years after entry into force of this Convention, testing of its first destruction facility shall be completed. Not less than 1 per cent. of the Category 1 chemical weapons shall be destroyed not later than three years after the entry into force of this Convention;

(ii) Phase 2— Not less than 20 per cent. of the Category 1 chemical weapons shall be destroyed not later than five years after the entry into force of this Convention;

(iii) Phase 3—Not less than 45 per cent. of the Category 1 chemical weapons shall be destroyed not later than seven years after the entry into force of this Convention;

(iv) Phase 4—All Category 1 chemical weapons shall be destroyed not later than 10 years after the entry into force of this Convention;



(b) The destruction of Category 2 chemical weapons not later than one year after this Convention enters into force for it and shall complete the destruction not later than five years after the entry into force of this Convention. Category 2 chemical weapons shall be destroyed in equal annual increments throughout the destruction period. The comparison factor for such weapons is the weight of the chemicals within Category 2; and

(c) The destruction of Category 3 chemical weapons not later than one year after this Convention enters into force for it, and shall complete the destruction not later than five years after the entry into force of this Convention. Category 3 chemical weapons shall be destroyed in equal annual increments throughout the destruction period. The comparison factor for unfilled munitions and devices is expressed in nominal fill volume (m<sup>3</sup>) and for equipment in number of items.

18. For the destruction of binary chemical weapons the following shall apply:

(a) For the purposes of the order of destruction, a declared quantity (in tonnes) of the key component intended for a specific toxic end-product shall be considered equivalent to the quantity (in tonnes) of this toxic end-product calculated on a stoichiometric basis assuming one hundred per cent yield;

(b) A requirement to destroy a given quantity of the key component shall entail a requirement to destroy a corresponding quantity of the other component, calculated from the actual weight ratio of the components in the relevant type of binary chemical munition device;

(c) If more of the other component is declared than is needed, based on the actual weight ratio between components, the excess shall be destroyed over the first two years after destruction operations begin;

(d) At the end of each subsequent operational year a State Party may retain an amount of the other declared component that is determined on the basis of the actual weight ratio of the components in the relevant type of binary chemical munition device.

19. For multicomponent chemical weapons the order of destruction shall be analogous to that envisaged for binary chemical weapons.

#### *Modification of intermediate destruction deadlines*

20. The Executive Council shall review the general plans for destruction of chemical weapons, submitted pursuant to Article III, paragraph 1 (a) (v), and in accordance with paragraph 6, *inter alia*, to assess their conformity with the order of destruction set forth in paragraphs 15 to 19. The Executive Council shall consult with any State Party whose plan does not conform, with the objective of bringing the plan into conformity.

21. If a State Party, due to exceptional circumstances beyond its control, believes that it cannot achieve the level of destruction specified for Phase 1, Phase 2 or Phase 3 of the order of destruction of Category 1 chemical weapons, it may propose changes in those levels. Such a proposal must be made not later than 120 days after the entry into force of this Convention and shall contain a detailed explanation of the reasons for the proposal.

22. Each State Party shall take all necessary measures to ensure destruction of Category 1 chemical weapons in accordance with the destruction deadlines set forth in paragraph 17(a) as changed pursuant to paragraph 21. However, if a State Party believes that it will be unable to ensure the destruction of the percentage of Category 1 chemical weapons required by an intermediate destruction deadline, it may request the Executive Council to recommend to the Conference to grant an extension of its obligation to meet that deadline. Such a request must be made not less than 180 days before the intermediate destruction deadline and shall contain a detailed explanation of the reasons for the request and the plans of the State Party for ensuring that it will be able to fulfil its obligation to meet the next intermediate destruction deadline.

23. If an extension is granted, the State Party shall still be under the obligation to meet the cumulative destruction requirements set forth for the next destruction deadline. Extensions granted pursuant to this Section shall not, in any way, modify the obligation of the State Party to destroy all Category 1 chemical weapons not later than 10 years after the entry into force of this Convention.

*Extension of the deadline for completion of destruction*

24. If a State Party believes that it will be unable to ensure the destruction of all Category 1 chemical weapons not later than 10 years after the entry into force of this Convention, it may submit a request to the Executive Council for an extension of the deadline for completing the destruction of such chemical weapons. Such a request must be made not later than nine years after the entry into force of this Convention.

25. The request shall contain :

(a) The duration of the proposed extension;

(b) A detailed explanation of the reasons for the proposed extension; and

(c) A detailed plan for destruction during the proposed extension and the remaining portion of the original ten-year period for destruction.

26. A decision on the request shall be taken by the Conference at its next session, on the recommendation of the Executive Council. Any extension shall be the minimum necessary, but in no case shall be deadline for a State Party to complete its destruction of all chemical weapons be extended beyond 15 years after the entry into force of this Convention. The Executive Council shall set conditions for the granting of the extension, including the specific verification measures deemed necessary as well as specific actions to be taken by the State Party to overcome problems in its destruction programme. Costs of verification during the extension period shall be allocated in accordance with Article IV, paragraph 16.

27. If an extension is granted, the State Party shall take appropriate measures to meet all subsequent deadlines.

28. The State Party shall continue to submit detailed annual plans for destruction in accordance with paragraph 29 and annual reports on the destruction of Category 1 chemical weapons in accordance with paragraph 36, until all Category 1 chemical weapons are destroyed. In addition, not later than at the end of each 90 days of the extension period, the State Party shall report to the Executive Council on its destruction activity. The Executive Council shall review progress towards completion of destruction and take the necessary measures to document this progress. All information concerning the destruction activities during the extension period shall be provided by the Executive Council to States Parties, upon request.

*Detailed annual plans for destruction*

29. The detailed annual plans for destruction shall be submitted to the Technical Secretariat not less than 60 days before each annual destruction period begins pursuant to Article IV, paragraph 7(a), and shall specify :

(a) The quantity of each specific type of chemical weapon to be destroyed at each destruction facility and the inclusive dates when the destruction of each specific type of chemical weapon will be accomplished;

(b) The detailed site diagram for each chemical weapons destruction facility and any changes to previously submitted diagrams; and

(c) The detailed schedule of activities for each chemical weapons destruction facility for the upcoming year, identifying time required for design, construction or modification of the facility, installation of equipment, equipment check-out and operator training, destruction operations for each specific type of chemical weapon, and scheduled periods of inactivity.

30. A State Party shall provide, for each of its chemical weapons destruction facilities, detailed facility information to assist the Technical Secretariat in developing preliminary inspection procedures for use at the facility.

31. The detailed facility information for each destruction facility shall include the following information:

- (a) Name, address and location;
- (b) Detailed, annotated facility drawings;
- (c) Facility design drawings, process drawings, and piping and instrumentation design drawings;
- (d) Detailed technical descriptions, including design drawings and instrument specifications, for the equipment required for: removing the chemical fill from the munitions, devices, and containers; temporarily storing the drained chemical fill; destroying the chemical agent; and destroying the munitions, devices, and containers;
- (e) Detailed technical descriptions of the destruction process, including material flow rates, temperatures and pressures, and designed destruction efficiency;
- (f) Design capacity for each specific type of chemical weapon;
- (g) A detailed description of the products of destruction and the method of their ultimate disposal;
- (h) A detailed technical description of measures to facilitate inspections in accordance with this Convention;
- (i) A detailed description of any temporary holding area at the destruction facility that will be used to provide chemical weapons directly to the destruction facility, including site and facility drawings and information on the storage capacity for each specific type of chemical weapon to be destroyed at the facility;
- (j) A detailed description of the safety and medical measures in force at the facility;
- (k) A detailed description of the living quarters and working premises for the inspectors; and
- (l) Suggested measures for international verification.

32. A State Party shall provide, for each of its chemical weapons destruction facilities, the plant operations manuals, the safety and medical plans, the laboratory operations and quality assurance and control manuals, and the environmental permits that have been obtained, except that this shall not include material previously provided.

33. A State Party shall promptly notify the Technical Secretariat of any developments that could affect inspection activities at its destruction facilities.

34. Deadlines for submission of the information specified in paragraphs 30 to 32 shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i).

35. After a review of the detailed facility information for each destruction facility, the Technical Secretariat, if the need arises, shall enter into consultation with the State Party concerned in order to ensure that its chemical weapons destruction facilities are designed to assure the destruction of chemical weapons, to allow advanced planning on how verification measures may be applied and to ensure that the application of verification measures is consistent with proper facility operation, and that the facility operation allows appropriate verification.

#### *Annual reports on destruction*

36. Information regarding the implementation of plans for destruction of chemical weapons shall be submitted to the Technical Secretariat pursuant to Article IV, paragraph 7

(b), not later than 60 days after the end of each annual destruction period and shall specify the actual amounts of chemical weapons which were destroyed during the previous year at each destruction facility. If appropriate, reasons for not meeting destruction goals should be stated.

#### **D. VERIFICATION**

##### *Verification of declarations of chemical weapons through on-site inspection*

37. The purpose of the verification of declarations of chemical weapons shall be to confirm through on-site inspection the accuracy of the relevant declarations made pursuant to Article III.

38. The inspectors shall conduct this verification promptly after a declaration is submitted. They shall, *inter alia*, verify the quantity and identity of chemicals, types and number of munitions, devices and other equipment.

39. The inspectors shall employ, as appropriate, agreed seals, markers or other inventory control procedures to facilitate an accurate inventory of the chemical weapons at each storage facility.

40. As the inventory progresses, inspectors shall install such agreed seals as may be necessary to clearly indicate if any stocks are removed, and to ensure the securing of the storage facility during the inventory. After completion of the inventory, such seals will be removed unless otherwise agreed.

##### *Systematic verification of storage facilities*

41. The purpose of the systematic verification of storage facilities shall be to ensure that no undetected removal of chemical weapons from such facilities takes place.

42. The systematic verification shall be initiated as soon as possible after the declaration of chemical weapons is submitted and shall continue until all chemical weapons have been removed from the storage facility. It shall in accordance with the facility agreement, combine on-site inspection and monitoring with on-site instruments.

43. When all chemical weapons have been removed from the storage facility, the Technical Secretariat shall confirm the declaration of the State Party to that effect. After this confirmation, the Technical Secretariat shall terminate the systematic verification of the storage facility and shall promptly remove any monitoring instruments installed by the inspectors.

##### *Inspections and visits*

44. The particular storage facility to be inspected shall be chosen by the Technical Secretariat in such a way as to preclude the prediction of precisely when the facility is to be inspected. The guidelines for determining the frequency of systematic on-site inspections shall be elaborated by the Technical Secretariat, taking into account the recommendations to be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i).

45. The Technical Secretariat shall notify the inspected State Party of its decision to inspect or visit the storage facility 48 hours before the planned arrival of the inspections team at the facility for systematic inspections or visits. In cases of inspections or visits to resolve urgent problems, this period may be shortened. The Technical Secretariat shall specify the purpose of the inspection or visit.

46. The inspected State Party shall make any necessary preparations for the arrival of the inspectors and shall ensure their expeditious transportation from their point of entry to the storage facility. The facility agreement will specify administrative arrangements for inspectors.

47. The inspected State Party shall provide the inspection team upon its arrival at the chemical weapons storage facility to carry out an inspection, with the following data on the facility:



- (a) The number of storage buildings and storage locations;
- (b) For each storage building and storage location, the type and the identification number or designation, shown on the site diagram; and
- (c) For each storage building and storage location at the facility, the number of items of each specific type of chemical weapon, and, for containers that are not part of binary munitions, the actual quantity of chemical fill in each container.

48. In carrying out an inventory, within the time available, inspectors shall have the right:

- (a) To use any of the following inspection techniques:
  - (i) Inventory all the chemical weapons stored at the facility;
  - (ii) Inventory all the chemical weapons stored in specific buildings or locations at the facility, as chosen by the inspectors; or
  - (iii) Inventory all the chemical weapons of one or more specific types stored at the facility, as chosen by the inspectors; and
- (b) To check all items inventoried against agreed records.

49. Inspectors shall, in accordance with facility agreements:

- (a) Have unimpeded access to all parts of the storage facilities including any munitions, devices, bulk containers, or other containers therein. While conducting their activity, inspectors shall comply with the safety regulations at the facility. The items to be inspected will be chosen by the inspectors; and
- (b) Have the right, during the first and any subsequent inspection of each chemical weapons storage facility, to designate munitions, devices, and containers from which samples are to be taken, and to affix to such munitions, devices, and containers a unique tag that will indicate an attempt to remove or alter the tag. A sample shall be taken from a tagged item at a chemical weapons storage facility or a chemical weapons destruction facility as soon as it is practically possible in accordance with the corresponding destruction programmes, and, in any case, not later than by the end of the destruction operations.

*Systematic verification of the destruction of chemical weapons*

50. The purpose of verification of destruction of chemical weapons shall be:

- (a) To confirm the identity and quantity of the chemical weapons stocks to be destroyed; and
- (b) To confirm that these stocks have been destroyed.

51. Chemical weapons destruction operations during the first 390 days after the entry into force of this Convention shall be governed by transitional verification arrangements. Such arrangements, including a transitional facility agreement, provisions for verification through on-site inspection and monitoring with on-site instruments, and the time-frame for application of the arrangements, shall be agreed between the Organization and the inspected State Party. These arrangements shall be approved by the Executive Council not later than 60 days after this Convention enters into force for the State Party, taking into account the recommendations of the Technical Secretariat, which shall be based on an evaluation of the detailed facility information provided in accordance with paragraph 31 and a visit to the facility. The Executive Council shall, at its first session, establish the guidelines for such transitional verification arrangements, based on recommendations to be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i). The transitional verification arrangements shall be designed to verify, throughout the entire transitional period, the destruction of chemical weapons in accordance with the purposes set forth in paragraph 50, and to avoid hampering ongoing destruction operations.

52. The provisions of paragraphs 53 to 61 shall apply to chemical weapons destruction operations that are to begin not earlier than 390 days after the entry into force of this Convention.

53. On the basis of this Convention and the detailed destruction facility information, and as the case may be, on experience from previous inspections, the Technical Secretariat shall prepare a draft plan for inspecting the destruction of chemical weapons at each destruction facility. The plan shall be completed and provided to the inspected State Party for comment not less than 270 days before the facility begins destruction operations pursuant to this Convention. Any differences between the Technical Secretariat and the inspected State Party should be resolved through consultations. Any unresolved matter shall be forwarded to the Executive Council for appropriate action with a view to facilitating the full implementation of this Convention.

54. The Technical Secretariat shall conduct an initial visit to each chemical weapons destruction facility of the inspected State Party not less than 240 days before each facility begins destruction operations pursuant to this Convention, to allow it to familiarize itself with the facility and assess the adequacy of the inspection plan.

55. In the case of an existing facility where chemical weapons destruction operations have already been initiated, the inspected State Party shall not be required to decontaminate the facility before the Technical Secretariat conducts an initial visit. The duration of the visit shall not exceed five days and the number of visiting personnel shall not exceed 15.

56. The agreed detailed plans for verification, with an appropriate recommendation by the Technical Secretariat, shall be forwarded to the Executive Council for review. The Executive Council shall review the plans with a view to approving them, consistent with verification objectives and obligations under this Convention. It should also confirm that verification schemes for destruction are consistent with verification aims and are efficient and practical. This review should be completed not less than 180 days before the destruction period begins.

57. Each member of the Executive Council may consult with the Technical Secretariat on any issues regarding the adequacy of the plan for verification. If there are no objections by any member of the Executive Council, the plan shall be put into action.

58. If there are any difficulties, the Executive Council shall enter into consultations with the State Party to reconcile them. If any difficulties remain unresolved they shall be referred to the Conference.

59. The detailed facility agreements for chemical weapons destruction facilities shall specify, taking into account the specific characteristics of the destruction facility and its mode of operation:

(a) Detailed on-site inspection procedures; and

(b) Provisions for verification through continuous monitoring with on-site instruments and physical presence of inspectors.

60. Inspectors shall be granted access to each chemical weapons destruction facility not less than 60 days before the commencement of the destruction, pursuant to this Convention, at the facility. Such access shall be for the purpose of supervising the installation of the inspection equipment, inspecting this equipment and testing its operation, as well as for the purpose of carrying out a final engineering review of the facility. In the case of an existing facility where chemical weapons destruction operations have already been initiated, destruction operations shall be stopped for the minimum amount of time required, not to exceed 60 days, for installation and testing of the inspection equipment. Depending on the results of the testing and review, the State Party and the Technical Secretariat may agree on additions or changes to the detailed facility agreement for the facility.

61. The inspected State Party shall notify, in writing, the inspection team leader at a chemical weapons destruction facility not less than four hours before the departure of each

shipment of chemical weapons from a chemical weapons storage facility to that destruction facility. This notification shall specify the name of the storage facility, the estimated times of departure and arrival, the specific types and quantities of chemical weapons being transported, whether any tagged items are being moved, and the method of transportation. This notification may include notification of more than one shipment. The inspection team leader shall be promptly notified, in writing, of any changes in this information.

*Chemical weapons storage facilities at chemical weapons destruction facilities*

62. The inspectors shall verify the arrival of the chemical weapons at the destruction facility and the storing of these chemical weapons. The inspectors shall verify the inventory of each shipment, using agreed procedures consistent with facility safety regulations, prior to the destruction of the chemical weapons. They shall employ, as appropriate, agreed seals, markers or other inventory control procedures to facilitate an accurate inventory of the chemical weapons prior to destruction.

63. As soon and as long as chemical weapons are stored at chemical weapons storage facilities located at chemical weapons destruction facilities, these storage facilities shall be subject to systematic verification in conformity with the relevant facility agreements.

64. At the end of an active destruction phase, inspectors shall make an inventory of the chemical weapons, that have been removed from the storage facility, to be destroyed. They shall verify the accuracy of the inventory of the chemical weapons remaining, employing inventory control procedures as referred to in paragraph 62.

*Systematic on-site verification measures at chemical weapons destruction facilities*

65. The inspectors shall be granted access to conduct their activities at the chemical weapons destruction facilities and the chemical weapons storage facilities located at such facilities during the entire active phase of destruction.

66. At each chemical weapons destruction facility, to provide assurance that no chemical weapons are diverted and that the destruction process has been completed, inspectors shall have the right to verify through their physical presence and monitoring with on-site instruments:

- (a) The receipt of chemical weapons at the facility;
- (b) The temporary holding area for chemical weapons and the specific type and quantity of chemical weapons stored in that area;
- (c) The specific type and quantity of chemical weapons being destroyed;
- (d) The process of destruction;
- (e) The end-product of destruction;
- (f) The mutilation of metal parts; and
- (g) The integrity of the destruction process and of the facility as a whole.

67. Inspectors shall have the right to tag, for sampling, munitions, devices, or containers located in the temporary holding areas at the chemical weapons destruction facilities.

68. To the extent that it meets inspection requirements, information from routine facility operations, with appropriate data authentication, shall be used for inspection purposes.

69. After the completion of each period of destruction, the Technical Secretariat shall confirm the declaration of the State Party, reporting the completion of destruction of the designated quantity of chemical weapons.

70. Inspectors shall, in accordance with facility agreements:

- (a) Have unimpeded access to all parts of the chemical weapons destruction facilities and the chemical weapons storage facilities located at such facilities, including

any munitions, devices, bulk containers, or other containers, therein. The items to be inspected shall be chosen by the inspectors in accordance with the verification plan that has been agreed to by the inspected State Party and approved by the Executive Council;

(b) Monitor the systematic on-site analysis of samples during the destruction process; and

(c) Receive, if necessary, samples taken at their request from any devices, bulk containers and other containers at the destruction facility or the storage facility thereat.



**PART IV (B)****OLD CHEMICAL WEAPONS AND ABANDONED CHEMICAL WEAPONS****A. GENERAL**

1. Old chemical weapons shall be destroyed as provided for in Section B.
2. Abandoned chemical weapons, including those which also meet the definition of Article II, paragraph 5 (b), shall be destroyed as provided for in Section C.

**B. REGIME FOR OLD CHEMICAL WEAPONS**

3. A State Party which has on its territory old chemical weapons as defined in Article II, paragraph 5 (a), shall, not later than 30 days after this Convention enters into force for it, submit to the Technical Secretariat all available relevant information, including, to the extent possible, the location, type, quantity and the present condition of these old chemical weapons.

In the case of old chemical weapons as defined in Article II, paragraph 5 (b), the State Party shall submit to the Technical Secretariat a declaration pursuant to Article III, paragraph 1 (b) (i), including, to the extent possible, the information specified in Part IV (A), paragraphs 1 to 3, of this Annex.

4. A State Party which discovers old chemical weapons after this Convention enters into force for it shall submit to the Technical Secretariat the information specified in paragraph 3 not later than 180 days after this discovery of the old chemical weapons.

5. The Technical Secretariat shall conduct an initial inspection, and any further inspections as may be necessary, in order to verify the information submitted pursuant to paragraphs 3 and 4 and in particular to determine whether the chemical weapons meet the definition of old chemical weapons as specified in Article II, paragraph 5. Guidelines to determine the usability of chemical weapons produced between 1925 and 1946 shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i).

6. A State Party shall treat old chemical weapons that have been confirmed by the Technical Secretariat as meeting the definition in Article II, paragraph 5(a), as toxic waste. It shall inform the Technical Secretariat of the steps being taken to destroy or otherwise dispose of such old chemical weapons as toxic waste in accordance with its national legislation.

7. Subject to paragraphs 3 to 5, a State Party shall destroy old chemical weapons that have been confirmed by the Technical Secretariat as meeting the definition in Article II, paragraph 5 (b), in accordance with Article IV and Part IV (A) of this Annex. Upon request of a State Party, the Executive Council may, however, modify the provisions on time-limit and order of destruction of these old chemical weapons, if it determines that doing so would not pose a risk to the object and purpose of this Convention. The request shall contain specific proposals for modification of the provisions and a detailed explanation of the reasons for the proposed modification.

**C. REGIME FOR ABANDONED CHEMICAL WEAPONS**

8. A State Party on whose territory there are abandoned chemical weapons (hereinafter referred to as the "Territorial State Party") shall, not later than 30 days after this Convention enters into force for it, submit to the Technical Secretariat all available relevant information concerning the abandoned chemical weapons. This information shall include, to the extent possible, the location, type, quantity and the present condition of the abandoned chemical weapons as well as information on the abandonment.

9. A State Party which discovers abandoned chemical weapons after this Convention enters into force for it shall, not later than 180 days after the discovery, submit to the Technical Secretariat all available relevant information concerning the discovered abandoned chemical

weapons. This information shall include, to the extent possible, the location, type, quantity and the present condition of the abandoned chemical weapons as well as information on the abandonment.

10. A State Party which has abandoned chemical weapons on the territory of another State Party (hereinafter referred to as the "Abandoning State Party") shall, not later than 30 days after this Convention enters into force for it, submit to the Technical Secretariat all available relevant information concerning the abandoned chemical weapons. This information shall include, to the extent possible, the location, type, quantity as well as information on the abandonment, and the condition of the abandoned chemical weapons.

11. The Technical Secretariat shall conduct an initial inspection, and any further inspections as may be necessary, in order to verify all available relevant information submitted pursuant to paragraphs 8 to 10 and determine whether systematic verification in accordance with Part IV (A), paragraphs 41 to 43, of this Annex is required. It shall, if necessary, verify the origin of the abandoned chemical weapons and establish evidence concerning the abandonment and the identity of the Abandoning State.

12. The report of the Technical Secretariat shall be submitted to the Executive Council, the Territorial State Party, and to the Abandoning State Party or the State Party declared by the Territorial State Party or identified by the Technical Secretariat as having abandoned the chemical weapons. If one of the States Parties directly concerned is not satisfied with the report it shall have the right to settle the matter in accordance with provisions of this Convention or bring the issue to the Executive Council with a view to settling the matter expeditiously.

13. Pursuant to Article I, paragraph 3, the Territorial State Party shall have the right to request the State Party which has been established as the Abandoning State Party pursuant to paragraphs 8 to 12 to enter into consultations for the purpose of destroying the abandoned chemical weapons in cooperation with the Territorial State Party. It shall immediately inform the Technical Secretariat of this request.

14. Consultations between the Territorial State Party and the Abandoning State Party with a view to establishing a mutually agreed plan for destruction shall begin not later than 30 days after the Technical Secretariat has been informed of the request referred to in paragraph 13. The mutually agreed plan for destruction shall be transmitted to the Technical Secretariat not later than 180 days after the Technical Secretariat has been informed of the request referred to in paragraph 13. Upon the request of the Abandoning State Party and the Territorial State Party, the Executive Council may extend the time-limit for transmission of the mutually agreed plan for destruction.

15. For the purpose of destroying abandoned chemical weapons, the Abandoning State Party shall provide all necessary financial, technical, expert, facility as well as other resources. The Territorial State Party shall provide appropriate cooperation.

16. If the Abandoning State cannot be identified or is not a State Party, the Territorial State Party, in order to ensure the destruction of these abandoned chemical weapons, may request the Organization and other States Parties to provide assistance in the destruction of these abandoned chemical weapons.

17. Subject to paragraphs 8 to 16, Article IV and Part IV (A) of this Annex shall also apply to the destruction of abandoned chemical weapons. In the case of abandoned chemical weapons which also meet the definition of old chemical weapons in Article II, paragraph 5 (b), the Executive Council, upon the request of the Territorial State Party, individually or together with the Abandoning State Party, may modify or in exceptional cases suspend the application of provisions on destruction, if it determines that doing so would not pose a risk to the object and purpose of this Convention. In the case of abandoned chemical weapons which do not meet the definition of old chemical weapons in Article II, paragraph 5 (b), the Executive Council, upon the request of the Territorial State Party, individually or together with the Abandoning State Party, may in exceptional circumstances modify the provisions

on the time-limit and the order of destruction, if it determines that doing so would not pose a risk to the object and purpose of this Convention. Any request as referred to in this paragraph shall contain specific proposals for modification of the provisions and a detailed explanation of the reasons for the proposal modification.

18. States Parties may conclude between themselves agreements or arrangements concerning the destruction of abandoned chemical weapons. The Executive Council may, upon request of the Territorial State Party, individually or together with the Abandoning State Party, decide that selected provisions of such agreements or arrangements take precedence over provisions of this Section, if it determines that the agreement or arrangement ensures the destruction of the abandoned chemical weapons in accordance with paragraph 17.

## PART V

DESTRUCTION OF CHEMICAL WEAPONS PRODUCTION FACILITIES AND  
ITS VERIFICATION PURSUANT TO ARTICLE V

## A. DECLARATIONS

*Declarations of chemical weapons production facilities*

1. The declaration of chemical weapons production facilities by a State Party pursuant to Article III, paragraph 1 (c) (ii), shall contain for each facility :

(a) The name of the facility, the names of the owners, and the names of the companies or enterprises operating the facility since 1 January 1946;

(b) The precise location of the facility, including the address, location of the complex, location of the facility within the complex including the specific building and structure number, if any;

(c) A statement whether it is a facility for the manufacture of chemicals that are defined as chemical weapons or whether it is a facility for the filling of chemical weapons, or both;

(d) The date when the construction of the facility was completed and the periods during which any modifications to the facility were made, including the installation of new or modified equipment, that significantly changed the production process characteristics of the facility;

(e) Information on the chemicals defined as chemical weapons that were manufactured at the facility; the munitions, devices, and containers that were filled at the facility; and the dates of the beginning and cessation of such manufacture or filling :

(i) For chemicals defined as chemical weapons that were manufactured at the facility, such information shall be expressed in terms of the specific types of chemicals manufactured, indicating the chemical name in accordance with the current International Union of Pure and Applied Chemistry (IUPAC) nomenclature, structural formula, and the Chemical Abstracts Service registry number, if assigned, and in terms of the amount of each chemical expressed by weight of chemical in tonnes;

(ii) For munitions, devices and containers that were filled at the facility, such information shall be expressed in terms of the specific type of chemical weapons filled and the weight of the chemical fill per unit;

(f) The production capacity of the chemical weapons production facility:

(i) For a facility where chemical weapons were manufactured, production capacity shall be expressed in terms of the annual quantitative potential for manufacturing a specific substance on the basis of the technological process actually used or, in the case of processes not actually used, planned to be used at the facility;

(ii) For a facility where chemical weapons were filled, production capacity shall be expressed in terms of the quantity of chemical that the facility can fill into each specific type of chemical weapon a year;

(g) For each chemical weapons production facility that has not been destroyed, a description of the facility including :

(i) A site diagram;

(ii) A process flow diagram of the facility; and



(iii) An inventory of built up the facility, and specialized equipment at the facility and of any spare parts such equipment;

(h) The present status of the facility, stating:

(i) The date when chemical weapons were last produced at the facility;

(ii) Whether the facility has been destroyed, including the date and manner of its destruction; and

(iii) Whether the facility has been used or modified before entry into force of this Convention for an activity not related to the production of chemical weapons, and if so, information on what modifications have been made, the date such non-chemical weapons related activity began and the nature of such activity, indicating, if applicable, the kind of product;

(i) A specification of the measures that have been taken by the State Party for closure of, and a description of the measures that have been or will be taken by the State Party to inactivate the facility;

(j) A description of the normal pattern of activity for safety and security at the inactivated facility; and

(k) A statement as to whether the facility will be converted for the destruction of chemical weapons and, if so, the dates for such conversions.

*Declarations of chemical weapons production facilities pursuant to Article III, paragraph 1 (c) (iii)*

2. The declaration of chemical weapons production facilities pursuant to Article III, paragraph 1 (c) (iii), shall contain all information specified in paragraph 1 above. It is the responsibility of the State Party on whose territory the facility is or has been located to make appropriate arrangements with the other State to ensure that the declarations are made. If the State Party on whose territory the facility is or has been located is not able to fulfil this obligation, it shall state the reasons therefor.

*Declarations of past transfers and receipts*

3. A State Party that has transferred or received chemical weapons production equipment since 1st January, 1946 shall declare these transfers and receipts pursuant to Article III, paragraph 1 (c) (iv), and in accordance with paragraph 5 below. When not all the specified information is available for transfer and receipt of such equipment for the period between 1 January 1946 and 1 January 1970, the State Party shall declare whatever information is still available to it and provide an explanation as to why it cannot submit a full declaration.

4. Chemical weapons production equipment referred to in paragraph 3 means:

(a) Specialized equipment;

(b) Equipment for the production of equipment specifically designed for use directly in connection with chemical weapons employment; and

(c) Equipment designed or used exclusively for producing non-chemical parts for chemical munitions.

5. The declaration concerning transfer and receipt of chemical weapons production equipment shall specify:

(a) Who received / transferred the chemical weapons production equipment;

(b) The identity of such equipment;

(c) The date of transfer or receipt;

(d) Whether the equipment was destroyed, if known; and

(e) Current disposition, if known.

*Submission of general plans for destruction*

6. For each chemical weapons production facility, a State Party shall supply the following information:

- (a) Envisaged time-frame for measures to be taken; and
- (b) Methods of destruction.

7. For each chemical weapons production facility that a State Party intends to convert temporarily into a chemical weapons destruction facility, the State Party shall supply the following information:

- (a) Envisaged time-frame for conversion into a destruction facility;
- (b) Envisaged time-frame for utilizing the facility as a chemical weapons destruction facility;
- (c) Description of the new facility;
- (d) Method of destruction of special equipment;
- (e) Time-frame for destruction of the converted facility after it has been utilized to destroy chemical weapons; and
- (f) Method of destruction of the converted facility.

*Submission of annual plans for destruction and annual reports on destruction*

8. The State Party shall submit an annual plan for destruction not less than 90 days before the beginning of the coming destruction year. The annual plan shall specify:

- (a) Capacity to be destroyed;
- (b) Name and location of the facilities where destruction will take place;
- (c) List of buildings and equipment that will be destroyed at each facility; and
- (d) Planned method(s) of destruction.

9. A State Party shall submit an annual report on destruction not later than 90 days after the end of the previous destruction year. The annual report shall specify:

- (a) Capacity destroyed;
- (b) Name and location of each facility where destruction took place;
- (c) List of buildings and equipment that were destroyed at each facility;
- (d) Methods of destruction.

10. For a chemical weapons production facility declared pursuant to Article III, paragraph 1(c) (iii), it is the responsibility of the State Party on whose territory the facility is or has been located to make appropriate arrangements to ensure that the declarations specified in paragraphs 6 to 9 above are made. If the State Party on whose territory the facility is or has been located is not able to fulfil this obligation, it shall state the reasons therefor.

**B. DESTRUCTION***General principles for destruction of chemical weapons production facilities*

11. Each State Party shall decide on methods to be applied for the destruction of chemical weapons production facilities, according to the principles laid down in Article V and in this Part.

*Principles and methods for closure of a chemical weapons production facility*

12. The purpose of the closure of a chemical weapons production facility is to render it inactive.

13. Agreed measures for closure shall be taken by a State Party with due regard to the specific characteristics of each facility. Such measures shall include, *inter alia*:

(a) Prohibition of occupation of the specialized buildings and standard buildings of the facility except for agreed activities;

(b) Disconnection of equipment directly related to the production of chemical weapons, including, *inter alia*, process control equipment and utilities;

(c) Decommissioning of protective installations and equipment used exclusively for the safety of operations of the chemical weapons production facility;

(d) Installation of blind flanges and other devices to prevent the addition of chemicals to, or the removal of chemicals from, any specialized process equipment for synthesis, separation or purification of chemicals defined as a chemical weapon, any storage tank, or any machine for filling chemical weapons, the heating, cooling, or supply of electrical or other forms of power to such equipment, storage tanks, or machines; and

(e) Interruption of rail, road and other access routes for heavy transport to the chemical weapons production facility except those required for agreed activities.

14. While the chemical weapons production facility remains closed, a State Party may continue safety and physical security activities at the facility.

*Technical maintenance of chemical weapons production facilities prior to their destruction*

15. A State Party may carry out standard maintenance activities at chemical weapons production facilities only for safety reasons, including visual inspection, preventive maintenance, and routine repairs.

16. All planned maintenance activities shall be specified in the general and detailed plans for destruction. Maintenance activities shall not include:

(a) Replacement of any process equipment;

(b) Modification of the characteristics of the chemical process equipment;

(c) Production of chemicals of any type.

17. All maintenance activities shall be subject to monitoring by the Technical Secretariat.

*Principles and methods for temporary conversion of chemical weapons production facilities into chemical weapons destruction facilities*

18. Measures pertaining to the temporary conversion of chemical weapons production facilities into chemical weapons destruction facilities shall ensure that the regime for the temporarily converted facilities is at least as stringent as the regime for chemical weapons production facilities that have not been converted.

19. Chemical weapons production facilities converted into chemical weapons destruction facilities before entry into force of this Convention shall be declared under the category of chemical weapons production facilities.

They shall be subject to an initial visit by inspectors, who shall confirm the correctness of the information about these facilities. Verification that the conversion of these facilities was performed in such a manner as to render them inoperable as chemical weapons production facilities shall also be required, and shall fall within the framework of measures provided for the facilities that are to be rendered inoperable not later than 90 days after entry into force of this Convention.

20. A State Party that intends to carry out a conversion of chemical weapons production facilities shall submit to the Technical Secretariat, not later than 30 days after this Convention enters into force for it, or not later than 30 days after a decision has been taken for temporary conversion, a general facility conversion plan, and subsequently shall submit annual plans.

21. Should a State Party have the need to convert to a chemical weapons destruction facility an additional chemical weapons production facility that had been closed after this Convention entered into force for it, it shall inform the Technical Secretariat thereof not less than 150 days before conversion. The Technical Secretariat, in conjunction with the State Party, shall make sure that the necessary measures are taken to render that facility, after its conversion, inoperable as a chemical weapons production facility.

22. A facility converted for the destruction of chemical weapons shall not be more fit for resuming chemical weapons production than a chemical weapons production facility which has been closed and is under maintenance. Its reactivation shall require no less time than that required for a chemical weapons production facility that has been closed and is under maintenance.

23. Converted chemical weapons production facilities shall be destroyed not later than 10 years after entry into force of this Convention.

24. Any measures for the conversion of any given chemical weapons production facility shall be facility-specific and shall depend upon its individual characteristics.

25. The set of measures carried out for the purpose of converting a chemical weapons production facility into a chemical weapons destruction facility shall not be less than that which is provided for the disabling of other chemical weapons production facilities to be carried out not later than 90 days after this Convention enters into force for the State Party.

*Principles and methods related to destruction of a chemical weapons production facility*

26. A State Party shall destroy equipment and buildings covered by the definition of a chemical weapons production facility as follows:

(a) All specialized equipment and standard equipment shall be physically destroyed;

(b) All specialized buildings and standard buildings shall be physically destroyed.

27. A State Party shall destroy facilities for producing unfilled chemical munitions and equipment for chemical weapons employment as follows:

(a) Facilities used exclusively for production of non-chemical parts for chemical munitions or equipment specifically designed for use directly in connection with chemical weapons employment, shall be declared and destroyed. The destruction process and its verification shall be conducted according to the provisions of Article V and this Part of this Annex that govern destruction of chemical weapons production facilities;

(b) All equipment designed or used exclusively for producing non-chemical parts for chemical munitions shall be physically destroyed. Such equipment, which includes specially designed moulds and metal-forming dies, may be brought to a special location for destruction;

(c) All buildings and standard equipment used for such production activities shall be destroyed or converted for purposes not prohibited under this Convention, with confirmation, as necessary, through consultations and inspections as provided for under Article IX;

(d) Activities for purposes not prohibited under this Convention may continue while destruction or conversion proceeds.

*Order of destruction*

28. The order of destruction of chemical weapons production facilities is based on the obligations specified in Article I and the other Articles of this Convention, including obligations regarding systematic on-site verification. It takes into account interests of States Parties for undiminished security during the destruction period; confidence-building in the



early part of the destruction stage; gradual acquisition of experience in the course of destroying chemical weapons production facilities; and applicability irrespective of the actual characteristics of the facilities and the methods chosen for their destruction. The order of destruction is based on the principle of levelling out.

29. A State Party shall, for each destruction period, determine which chemical weapons production facilities are to be destroyed and carry out the destruction in such a way that not more than what is specified in paragraphs 30 and 31 remains at the end of each destruction period. A State Party is not precluded from destroying its facilities at a faster pace.

30. The following provisions shall apply to chemical weapons production facilities that produce Schedule 1 chemicals:

(a) A State Party shall start the destruction of such facilities not later than one year after this Convention enters into force for it, and shall complete it not later than ten years after entry into force of this Convention. For a State which is a Party at the entry into force of this Convention, this overall period shall be divided into three separate destruction periods, namely, years 2-5, years 6-8, and years 9-10. For States which become a Party after entry into force of this Convention, the destruction period shall be adapted, taking into account paragraphs 28 and 29;

(b) Production capacity shall be used as the comparison factor for such facilities. It shall be expressed in agent tonnes, taking into account the rules specified for binary chemical weapons;

(c) Appropriate agreed levels of production capacity shall be established for the end of the eighth year after entry into force of this Convention. Production capacity that exceeds the relevant level shall be destroyed in equal increments during the first two destruction periods;

(d) A requirement to destroy a given amount of capacity shall entail a requirement to destroy any other chemical weapons production facility that supplied the Schedule 1 facility or filled the Schedule 1 chemical produced there into munitions or devices;

(e) Chemical weapons production facilities that have been converted temporarily for destruction of chemical weapons shall continue to be subject to the obligation to destroy capacity according to the provisions of this paragraph.

31. A State Party shall start the destruction of chemical weapons production facilities not covered in paragraph 30 not later than one year after this Convention enters into force for it, and complete it not later than five years after entry into force of this Convention.

#### *Detailed plans for destruction*

32. Not less than 180 days before the destruction of a chemical weapons production facility starts, a State Party shall provide to the Technical Secretariat the detailed plans for destruction of the facility, including proposed measures for verification of destruction referred to in paragraph 33 (f), with respect to, *inter alia*:

(a) Timing of the presence of the inspectors at the facility to be destroyed; and

(b) Procedures for verification of measures to be applied to each item on the declared inventory.

33. The detailed plans for destruction of each chemical weapons production facility shall contain:

(a) Detailed time schedule of the destruction process;

(b) Layout of the facility;

(c) Process flow diagram;

- (d) Detailed inventory of equipment, buildings and other items to be destroyed;
  - (e) Measures to be applied to each item on the inventory;
  - (f) Proposed measures for verification;
  - (g) Security/safety measures to be observed during the destruction of the facility;
- and
- (h) Working and living conditions to be provided for inspectors.

34. If a State Party intends to convert temporarily a chemical weapons production facility into a chemical weapons destruction facility, it shall notify the Technical Secretariat not less than 150 days before undertaking any conversion activities. The notification shall:

- (a) Specify the name, address, and location of the facility;
- (b) Provide a site diagram indicating all structures and areas that will be involved in the destruction of chemical weapons and also identify all structures of the chemical weapons production facility that are to be temporarily converted;
- (c) Specify the types of chemical weapons, and the type and quantity of chemical fill to be destroyed;
- (d) Specify the destruction method;
- (e) Provide a process flow diagram, indicating which portions of the production process and specialized equipment will be converted for the destruction of chemical weapons;
- (f) Specify the seals and inspection equipment potentially affected by the conversion, if applicable; and
- (g) Provide a schedule identifying : The time allocated to design, temporary conversion of the facility, installation of equipment, equipment check-out, destruction operations, and closure.

35. In relation to the destruction of a facility that was temporarily converted for destruction of chemical weapons, information shall be provided in accordance with paragraphs 32 and 33.

#### *Review of detailed plans*

36. On the basis of the detailed plan for destruction and proposed measures for verification submitted by the State Party, and on experience from previous inspections, the Technical Secretariat shall prepare a plan for verifying the destruction of the facility, consulting closely with the State Party. Any differences between the Technical Secretariat and the State Party concerning appropriate measures should be resolved through consultations. Any unresolved matters shall be forwarded to the Executive Council for appropriate action with a view to facilitating the full implementation of this Convention.

37. To ensure that the provisions of Article V and this Part are fulfilled, the combined plans for destruction and verification shall be agreed upon between the Executive Council and the State Party. This agreement should be completed, not less than 60 days before the planned initiation of destruction.

38. Each member of the Executive Council may consult with the Technical Secretariat on any issues regarding the adequacy of the combined plan for destruction and verification. If there are no objections by any member of the Executive Council, the plan shall be put into action.

39. If there are any difficulties, the Executive Council shall enter into consultations with the State Party to reconcile them. If any difficulties remain unresolved they shall be referred to the Conference. The resolution of any differences over methods of destruction shall not delay the execution of other parts of the destruction plan that are acceptable.

40. If agreement is not reached with the Executive Council on aspects of verification,

or if the approved verification plan cannot be put into action, verification of destruction shall proceed through continuous monitoring with on-site instruments and physical presence of inspectors.

41. Destruction and verification shall proceed according to the agreed plan. The verification shall not unduly interfere with the destruction process and shall be conducted through the presence of inspectors on-site to witness the destruction.

42. If required verification or destruction actions are not taken as planned, all States Parties shall be so informed.

### C. VERIFICATION

#### *Verification of declarations of chemical weapons production facilities through on-site inspection*

43. The Technical Secretariat shall conduct an initial inspection of each chemical weapons production facility in the period between 90 and 120 days after this Convention enters into force for the State Party.

44. The purposes of the initial inspection shall be:

(a) To confirm that the production of chemical weapons has ceased and that the facility has been inactivated in accordance with this Convention;

(b) To permit the Technical Secretariat to familiarize itself with the measures that have been taken to cease production of chemical weapons at the facility;

(c) To permit the inspectors to install temporary seals;

(d) To permit the inspectors to confirm the inventory of buildings and specialized equipment;

(e) To obtain information necessary for planning inspection activities at the facility, including use of tamper-indicating seals and other agreed equipment, which shall be installed pursuant to the detailed facility agreement for the facility; and

(f) To conduct preliminary discussions regarding a detailed agreement on inspection procedures at the facility.

45. Inspectors shall employ, as appropriate, agreed seals, markers or other inventory control procedures to facilitate an accurate inventory of the declared items at each chemical weapons production facility.

46. Inspectors shall install such agreed devices as may be necessary to indicate if any resumption of production of chemical weapons occurs or if any declared item is removed. They shall take the necessary precaution not to hinder closure activities by the inspected State Party. Inspectors may return to maintain and verify the integrity of the devices.

47. If, on the basis of the initial inspection, the Director-General believes that additional measures are necessary to inactivate the facility in accordance with this Convention, the Director-General may request, not later than 135 days after this Convention enters into force for a State Party, that such measures be implemented by the inspected State Party not later than 180 days after this Convention enters into force for it. At its discretion, the inspected State Party may satisfy the request. If it does not satisfy the request, the inspected State Party and the Director-General shall consult to resolve the matter.

#### *Systematic verification of chemical weapons production facilities and cessation of their activities*

48. The purpose of the systematic verification of a chemical weapons production facility shall be to ensure that any resumption of production of chemical weapons or removal of declared items will be detected at this facility.

49. The detailed facility agreement for each chemical weapons production facility shall specify:

(a) Detailed on-site inspection procedures, which may include:

- (i) Visual examinations;
- (ii) Checking and servicing of seals and other agreed devices; and
- (iii) Obtaining and analysing samples;

(b) Procedures for using tamper-indicating seals and other agreed equipment to prevent the undetected reactivation of the facility, which shall specify:

- (i) The type, placement, and arrangements for installation; and
- (ii) The maintenance of such seals and equipment; and

(c) Other agreed measures.

50. The seals or other approved equipment provided for in a detailed agreement on inspection measures for that facility shall be placed not later than 240 days after this Convention enters into force for a State Party. Inspectors shall be permitted to visit each chemical weapons production facility for the installation of such seals or equipment.

51. During each calendar year, the Technical Secretariat shall be permitted to conduct up to four inspections of each chemical weapons production facility.

52. The Director-General shall notify the inspected State Party of his decision to inspect or visit a chemical weapons production facility 48 hours before the planned arrival of the inspection team at the facility for systematic inspections or visits. In the case of inspections or visits to resolve urgent problems, this period may be shortened. The Director-General shall specify the purpose of the inspection or visit.

53. Inspectors shall, in accordance with the facility agreements, have unimpeded access to all parts of the chemical weapons production facilities. The items on the declared inventory to be inspected shall be chosen by the inspectors.

54. The guidelines for determining the frequency of systematic on-site inspections shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i). The particular production facility to be inspected shall be chosen by the Technical Secretariat in such a way as to preclude the prediction of precisely when the facility is to be inspected.

#### *Verification of destruction of chemical weapons production facilities*

55. The purpose of systematic verification of the destruction of chemical weapons production facilities shall be to confirm that the facility is destroyed in accordance with the obligations under this Convention and that each item on the declared inventory is destroyed in accordance with the agreed detailed plan for destruction.

56. When all items on the declared inventory have been destroyed, the Technical Secretariat shall confirm the declaration of the State Party to that effect. After this confirmation, the Technical Secretariat shall terminate the systematic verification of the chemical weapons production facility and shall promptly remove all devices and monitoring instruments installed by the inspectors.

57. After this confirmation, the State Party shall make the declaration that the facility has been destroyed.

#### *Verification of temporary conversion of a chemical weapons production facility into a chemical weapons destruction facility*

58. Not later than 90 days after receiving the initial notification of the intent to convert temporarily a production facility, the inspectors shall have the right to visit the facility to familiarize themselves with the proposed temporary conversion and to study possible inspection measures that will be required during the conversion.

59. Not later than 60 days after such a visit, the Technical Secretariat and the inspected State Party shall conclude a transition agreement containing additional inspection measures for the temporary conversion period. The transition agreement shall specify inspection



procedures, including the use of seals, monitoring equipment, and inspections, that will provide confidence that no chemical weapons production takes place during the conversion process. This agreement shall remain in force from the beginning of the temporary conversion activity until the facility begins operation as a chemical weapons destruction facility.

60. The inspected State Party shall not remove or convert any portion of the facility, or remove or modify any seal or other agreed inspection equipment that may have been installed pursuant to this Convention until the transition agreement has been concluded.

61. Once the facility begins operation as a chemical weapons destruction facility, it shall be subject to the provisions of Part IV(A) of this Annex applicable to chemical weapons destruction facilities. Arrangements for the pre-operation period shall be governed by the transition agreement.

62. During destruction operations the inspectors shall have access to all portions of the temporarily converted chemical weapons production facilities, including those that are not directly involved with the destruction of chemical weapons.

63. Before the commencement of work at the facility to convert it temporarily for chemical weapons destruction purposes and after the facility has ceased to function as a facility for chemical weapons destruction, the facility shall be subject to the provisions of this Part applicable to chemical weapons production facilities.

**D. CONVERSION OF CHEMICAL WEAPONS PRODUCTION FACILITIES TO PURPOSES  
NOT PROHIBITED UNDER THIS CONVENTION**

*Procedures for requesting conversion*

64. A request to use a chemical weapons production facility for purposes not prohibited under this Convention may be made for any facility that a State Party is already using for such purposes before this Convention enters into force for it, or that it plans to use for such purposes.

65. For a chemical weapons production facility that is being used for purposes not prohibited under this Convention when this Convention enters into force for the State Party, the request shall be submitted to the Director-General not later than 30 days after this Convention enters into force for the State Party. The request shall contain, in addition to data submitted in accordance with paragraph 1(h) (iii), the following information:

(a) A detailed justification for the request;

(b) A general facility conversion plan that specifies:—

(i) The nature of the activity to be conducted at the facility;

(ii) If the planned activity involves production, processing, or consumption of chemicals: the name of each of the chemicals, the flow diagram of the facility, and the quantities planned to be produced, processed, or consumed annually;

(iii) Which buildings or structures are proposed to be used and what modifications are proposed, if any;

(iv) Which buildings or structures have been destroyed or are proposed to be destroyed and the plans for destruction;

(v) What equipment is to be used in the facility;

(vi) What equipment has been removed and destroyed and what equipment is proposed to be removed and destroyed and the plans for its destruction;

(vii) The proposed schedule for conversion, if applicable; and

(viii) The nature of the activity of each other facility operating at the site; and

(c) A detailed explanation of how measures set forth in sub-paragraph (b), as

well as any other measures proposed by the State Party, will ensure the prevention of standby chemical weapons production capability at the facility.

66. For a chemical weapons production facility that is not being used for purposes not prohibited under this Convention when this Convention enters into force for the State Party, the request shall be submitted to the Director-General not later than 30 days after the decision to convert, but in no case later than four years after this Convention enters into force for the State Party. The request shall contain the following information:

- (a) A detailed justification for the request, including its economic needs;
- (b) A general facility conversion plan that specifies:
  - (i) The nature of the activity planned to be conducted at the facility;
  - (ii) If the planned activity involves production, processing, or consumption of chemicals: the name of each of the chemicals, the flow diagram of the facility, and the quantities planned to be produced, processed, or consumed annually;
  - (iii) Which buildings or structures are proposed to be retained and what modifications are proposed, if any;
  - (iv) Which buildings or structures have been destroyed or are proposed to be destroyed and the plans for destruction;
  - (v) What equipment is proposed for use in the facility;
  - (vi) What equipment is proposed to be removed and destroyed and the plans for its destruction;
  - (vii) The proposed schedule for conversion; and
  - (viii) The nature of the activity of each other facility operating at the site; and
- (c) A detailed explanation of how the measures set forth in sub-paragraph (b), as well as any other measures proposed by the State Party, will ensure the prevention of standby chemical weapons production capability at the facility.

67. The State Party may propose in its request any other measures it deems appropriate to build confidence.

#### *Actions pending a decision*

68. Pending a decision of the Conference, a State Party may continue to use for purposes not prohibited under this Convention a facility that was being used for such purposes before this Convention enters into force for it, but only if the State Party certifies in its request that no specialized equipment and no specialized buildings are being used and that the specialized equipment and specialized buildings have been rendered inactive using the methods specified in paragraph 13.

69. If the facility, for which the request was made, was not being used for purposes not prohibited under this Convention before this Convention enters into force for the State Party, or if the certification required in paragraph 68 is not made, the State Party shall cease immediately all activity pursuant to Article V, paragraph 4. The State Party shall close the facility in accordance with paragraph 13 not later than 90 days after this Convention enters into force for it.

#### *Conditions for conversion*

70. As a condition for conversion of a chemical weapons production facility for purposes not prohibited under this Convention, all specialized equipment at the facility must be destroyed and all special features of buildings and structures that distinguish them from buildings and structures normally used for purposes not prohibited under this Convention and not involving Schedule 1 chemicals must be eliminated.

71. A converted facility shall not be used:

(a) For any activity involving production, processing, or consumption of a Schedule 1 chemical or a Schedule 2 chemical; or

(b) For the production of any highly toxic chemical, including any highly toxic phosphorous chemical, or for any other activity that would require special equipment for handling highly toxic or highly corrosive chemicals, unless the Executive Council decides that such production or activity would pose no risk to the object and purpose of this Convention, taking into account criteria for toxicity, corrosiveness and, if applicable, other technical factors, to be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i).

72. Conversion of a chemical weapons production facility shall be completed not later than six years after entry into force of this Convention.

*Decisions by the Executive Council and the Conference*

73. Not later than 90 days after receipt of the request by the Director-General, an initial inspection of the facility shall be conducted by the Technical Secretariat. The purpose of this inspection shall be to determine the accuracy of the information provided in the request, to obtain information on the technical characteristics of the proposed converted facility, and to assess the conditions under which use for purposes not prohibited under this Convention may be permitted. The Director-General shall promptly submit a report to the Executive Council, the Conference, and all States Parties containing his recommendations on the measures necessary to convert the facility to purposes not prohibited under this Convention and to provide assurance that the converted facility will be used only for purposes not prohibited under this Convention.

74. If the facility has been used for purposes not prohibited under this Convention before this Convention enters into force for the State Party, and is continuing to be in operation, but the measures required to be certified under paragraph 68 have not been taken, the Director-General shall immediately inform the Executive Council, which may require implementation of measures it deems appropriate, *inter alia*, shut-down of the facility and removal of specialized equipment and modification of buildings or structures. The Executive Council shall stipulate the deadline for implementation of these measures and shall suspend consideration of the request pending their satisfactory completion. The facility shall be inspected promptly after the expiration of the deadline to determine whether the measures have been implemented. If not, the State Party shall be required to shut-down completely all facility operations.

75. As soon as possible after receiving the report of the Director-General, the Conference, upon recommendation of the Executive Council, shall decide, taking into account the report and any views expressed by States Parties, whether to approve the request, and shall establish the conditions upon which approval is contingent. If any State Party objects to approval of the request and the associated conditions, consultations shall be undertaken among interested States Parties for up to 90 days to seek a mutually acceptable solution. A decision on the request and associated conditions, along with any proposed modifications thereto, shall be taken, as a matter of substance, as soon as possible after the end of the consultation period.

76. If the request is approved, a facility agreement shall be completed not later than 90 days after such a decision is taken. The facility agreement shall contain the conditions under which the conversion and use of the facility is permitted, including measures for verification. Conversion shall not begin before the facility agreement is concluded.

*Detailed plans for conversion*

77. Not less than 180 days before conversion of a chemical weapons production facility is planned to begin, the State Party shall provide the Technical Secretariat with the

detailed plans for conversion of the facility, including proposed measures for verification of conversion, with respect to, *inter alia*:

- (a) Timing of the presence of the inspectors at the facility to be converted; and
- (b) Procedures for verification of measures to be applied to each item on the declared inventory.

78. The detailed plan for conversion of each chemical weapons production facility shall contain:

- (a) Detailed time schedule of the conversion process;
- (b) Layout of the facility before and after conversion;
- (c) Process flow diagram of the facility before, and as appropriate, after the conversion;
- (d) Detailed inventory of equipment, buildings and structures and other items to be destroyed and of the buildings and structures to be modified;
- (e) Measures to be applied to each item on the inventory, if any;
- (f) Proposed measures for verification;
- (g) Security/safety measures to be observed during the conversion of the facility;

and

- (h) Working and living conditions to be provided for inspectors.

#### *Review of detailed plans*

79. On the basis of the detailed plan for conversion and proposed measures for verification submitted by the State Party, and on experience from previous inspections, the Technical Secretariat shall prepare a plan for verifying the conversion of the facility, consulting closely with the State Party. Any differences between the Technical Secretariat and the State Party concerning appropriate measures shall be resolved through consultations. Any unresolved matters shall be forwarded to the Executive Council for appropriate action with a view to facilitate the full implementation of this Convention.

80. To ensure that the provisions of Article V and this Part are fulfilled, the combined plans for conversion and verification shall be agreed upon between the Executive Council and the State Party. This agreement shall be completed not less than 60 days before conversion is planned to begin.

81. Each member of the Executive Council may consult with the Technical Secretariat on any issue regarding the adequacy of the combined plan for conversion and verification. If there are no objections by any member of the Executive Council, the plan shall be put into action.

82. If there are any difficulties, the Executive Council should enter into consultations with the State Party to reconcile them. If any difficulties remain unresolved, they should be referred to the Conference. The resolution of any differences over methods of conversion should not delay the execution of other parts of the conversion plan that are acceptable.

83. If agreement is not reached with the Executive Council on aspects of verification, or if the approved verification plan cannot be put into action, verification of conversion shall proceed through continuous monitoring with on-site instruments and physical presence of inspectors.

84. Conversion and verification shall proceed according to the agreed plan. The verification shall not unduly interfere with the conversion process and shall be conducted through the presence of inspectors to confirm the conversion.



85. For the 10 years after the Director-General certifies that conversion is complete, the State Party shall provide to inspectors unimpeded access to the facility at any time. The inspectors shall have the right to observe all areas, all activities, and all items of equipment at the facility. The inspectors shall have the right to verify that the activities at the facility are consistent with any conditions established under this Section, by the Executive Council and the Conference. The inspectors shall also have the right, in accordance with provisions of Part II, Section E, of the Annex to receive samples from any area of the facility and to analyse them to verify the absence of Schedule 1 chemicals, their stable by products and decomposition products and of Schedule 2 chemicals and to verify that the activities at the facility are consistent with any other conditions on chemical activities established under this Section, by the Executive Council and the Conference. The inspectors shall also have the right to managed access, in accordance with Part X, Section C, of this Annex, to the plant site at which the facility is located. During the 10-year period, the State Party shall report annually on the activities at the converted facility. Upon completion of the 10-year period, the Executive Council, taking into account recommendations of the Technical Secretariat, shall decide on the nature of continued verification measures.

86. Costs of verification of the converted facility shall be allocated in accordance with Article V, paragraph 19.

## PART VI

## ACTIVITIES NOT PROHIBITED UNDER THIS CONVENTION IN ACCORDANCE WITH ARTICLE VI

## REGIME FOR SCHEDULE 1 CHEMICALS AND FACILITIES

## RELATED TO SUCH CHEMICALS

## A. GENERAL PROVISIONS

1. A State Party shall not produce, acquire, retain or use Schedule 1 chemicals outside the territories of States Parties and shall not transfer such chemicals outside its territory except to another State Party.

2. A State Party shall not produce, acquire, retain, transfer or use Schedule 1 chemicals unless:

(a) The chemicals are applied to research, medical, pharmaceutical or protective purposes; and

(b) The types and quantities of chemicals are strictly limited to those which can be justified for such purposes; and

(c) The aggregate amount of such chemicals at any given time for such purposes is equal to or less than 1 tonne; and

(d) The aggregate amount for such purposes acquired by a State Party in any year through production, withdrawal from chemical weapons stocks and transfer is equal to or less than 1 tonne.

## B. TRANSFERS

3. A State may transfer Schedule 1 chemicals outside its territory only to another State Party and only for research, medical, pharmaceutical or protective purposes in accordance with paragraph 2.

4. Chemicals transferred shall not be retransferred to a third State.

5. Not less than 30 days before any transfer to another State Party both States Parties shall notify the Technical Secretariat of the transfer.

6. Each State Party shall make a detailed annual declaration regarding transfers during the previous year. The declaration shall be submitted not later than 90 days after the end of that year and shall for each Schedule 1 chemical that has been transferred include the following information:

(a) The chemical name, structural formula and Chemical Abstracts Service registry number, if assigned;

(b) The quantity acquired from other States or transferred to other States Parties. For each transfer the quantity, recipient and purpose shall be included.

## C. PRODUCTION

*General principles for production*

7. Each State Party, during production under paragraphs 8 to 12, shall assign the highest priority to ensuring the safety of people and to protecting the environment. Each State Party shall conduct such production in accordance with its national standards for safety and emissions.

*Single small-scale facility*

8. Each State Party that produces Schedule 1 chemicals for research, medical, pharmaceutical or protective purposes shall carry out the production at a single small-scale facility approved by the State Party, except as set forth in paragraphs 10, 11 and 12.

9. The production at a single small-scale facility shall be carried out in reaction vessels in production lines not configured for continuous operation. The volume of such a reaction vessel shall not exceed 100 litres, and the total volume of all reaction vessels with a volume exceeding 5 litres shall not be more than 500 litres.

#### *Other facilities*

10. Production of Schedule 1 chemicals in aggregate quantities not exceeding 10 kg per year may be carried out for protective purposes at one facility outside a single small-scale facility. This facility shall be approved by the State Party.

11. Production of Schedule 1 chemicals in quantities of more than 100 g per year may be carried out for research, medical or pharmaceutical purposes outside a single small-scale facility in aggregate quantities not exceeding 10 kg per year facility. These facilities shall be approved by the State Party.

12. Synthesis of Schedule 1 chemicals for research, medical or pharmaceutical purposes, but not for protective purposes, may be carried out at laboratories in aggregate quantities less than 100 g per year per facility. These facilities shall not be subject to any obligation relating to declaration and verification as specified in Sections D and E.

### **D. DECLARATIONS**

#### *Single small-scale facility*

13. Each State Party that plans to operate a single small-scale facility shall provide the Technical Secretariat with the precise location and a detailed technical description of the facility, including an inventory of equipment and detailed diagrams. For existing facilities, this initial declaration shall be provided not later than 30 days after this Convention enters into force for the State Party. Initial declarations on new facilities shall be provided not less than 180 days before operations are to begin.

14. Each State Party shall give advance notification to the Technical Secretariat of planned changes related to the initial declaration. The notification shall be submitted not less than 180 days before the changes are to take place.

15. A State Party producing Schedule 1 chemicals at a single small-scale facility shall make a detailed annual declaration regarding the activities of the facility for the previous year. The declaration shall be submitted not later than 90 days after the end of that year and shall include:

(a) Identification of the facility;

(b) For each Schedule 1 chemical produced, acquired, consumed or stored at the facility, the following information:—

(i) The chemical name, structural formula and Chemical Abstracts Service registry number, if assigned;

(ii) The methods employed and quantity produced;

(iii) The name and quantity of precursors listed in Schedules 1, 2 or 3 used for production of Schedule 1 chemicals;

(iv) The quantity consumed at the facility and the purpose(s) of the consumption;

(v) The quantity received from or shipped to other facilities in the State Party. For each shipment the quantity, recipient and purpose should be included;

(vi) The maximum quantity stored at any time during the year; and

(vii) The quantity stored at the end of the year; and

(c) Information on any changes at the facility during the year compared to previously submitted detailed technical descriptions of the facility including inventories of equipment and detailed diagrams.

16. Each State Party producing Schedule 1 chemicals at a single small-scale facility shall make a detailed annual declaration regarding the projected activities and the anticipated production at the facility for the coming year. The declaration shall be submitted not less than 90 days before the beginning of that year and shall include:

- (a) Identification of the facility;
- (b) For each Schedule 1 chemical anticipated to be produced, consumed or stored at the facility, the following information:—
  - (i) The chemical name, structural formula and Chemical Abstracts Service registry number, if assigned;
  - (ii) The quantity anticipated to be produced and the purpose of the production; and
- (c) Information on any anticipated changes at the facility during the year compared to previously submitted detailed technical descriptions of the facility including inventories of equipment and detailed diagrams.

*Other facilities referred to in paragraphs 10 and 11*

17. For each facility, a State Party shall provide the Technical Secretariat with the name, location and a detailed technical description of the facility or its relevant part(s) as requested by the Technical Secretariat. The facility producing Schedule 1 chemicals for protective purposes shall be specifically identified. For existing facilities, this initial declaration shall be provided not later than 30 days after this Convention enters into force for the State Party. Initial declarations on new facilities shall be provided not less than 180 days before operations are to begin.

18. Each State Party shall give advance notification to the Technical Secretariat of planned changes related to the initial declaration. The notification shall be submitted not less than 180 days before the changes are to take place.

19. Each State Party shall, for each facility, make a detailed annual declaration regarding the activities of the facility for the previous year. The declaration shall be submitted not later than 90 days after the end of that year and shall include:

- (a) Identification of the facility;
- (b) For each Schedule 1 chemical the following information:
  - (i) The Chemical name, structural formula and Chemical Abstracts Service registry number, if assigned;
  - (ii) The quantity produced and, in case of production for protective purposes, methods employed;
  - (iii) The name and quantity of precursors listed in Schedules 1, 2 or 3 used for production of Schedule 1 chemicals;
  - (iv) The quantity consumed at the facility and the purpose of the consumption;
  - (v) The quantity transferred to other facilities within the State Party. For each transfer the quantity, recipient and purpose should be included;
  - (vi) The maximum quantity stored at any time during the year; and
  - (vii) The quantity stored at the end of the year; and
- (c) Information on any changes at the facility or its relevant parts during the year compared to previously submitted detailed technical description of the facility.

20. Each State Party shall, for each facility, make a detailed annual declaration regarding the projected activities and the anticipated production at the facility for the coming year the



declaration shall be submitted not less than 90 days before the beginning of that year and shall include:

- (a) Identification of the facility;
- (b) For each Schedule 1 chemical the following information:
  - (i) The chemical name, structural formula and Chemical Abstracts Service registry number, if assigned; and
  - (ii) The quantity anticipated to be produced, the time periods when the production is anticipated to take place and the purposes of the production, and
- (c) Information on any anticipated changes at the facility or its relevant parts, during the year compared to previously submitted detailed technical descriptions of the facility.

#### E. VERIFICATION

##### *Single small-scale facility*

21. The aim of verification activities at the single small-scale facility shall be to verify that the quantities of Schedule 1 chemicals produced are correctly declared and, in particular, that their aggregate amount does not exceed 1 tonne.

22. The facility shall be subject to systematic verification through onsite inspection and monitoring with on-site instruments.

23. The number, intensity, duration, timing and mode of inspections for a particular facility shall be based on the risk to the object and purpose of this Convention posed by the relevant chemicals, the characteristics of the facility and the nature of the activities carried out there. Appropriate guidelines shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i).

24. The purpose of the initial inspection shall be to verify information provided concerning the facility, including verification of the limits on reaction vessels set forth in paragraph 9.

25. Not later than 180 days after this Convention enters into force for a State Party, it shall conclude a facility agreement, based on a model agreement, with the Organization, covering detailed inspection procedures for the facility.

26. Each State Party Planning to establish a single small-scale facility after this Convention enters into force for it shall conclude a facility agreement, based on a model agreement, with the Organization, covering detailed inspection procedures for the facility before it begins operation or is used.

27. A model for agreements shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21(i).

##### *Other facilities referred to in paragraphs 10 and 11*

28. The aim of verification activities at any facility referred to in paragraphs 10 and 11 shall be to verify that:

- (a) The facility is not used to produce any Schedule 1 chemical, except for the declared chemicals;
- (b) The quantities of Schedule 1 chemicals produced, processed or consumed are correctly declared and consistent with needs for the declared purpose; and
- (c) The Schedule 1 chemical is not diverted or used for other purposes.

29. The facility shall be subject to systematic verification through on-site inspection and monitoring with on-site instruments.

30. The number, intensity, duration, timing and mode of inspections for a particular facility shall be based on the risk to the object and purpose of this Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out there. Appropriate guidelines shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i).

31. Not later than 180 days after this Convention enters into force for a State Party, it shall conclude facility agreements with the Organization, based on a model agreement covering detailed inspection procedures for each facility.

32. Each State Party planning to establish such a facility after entry into force of this convention shall conclude a facility agreement with the Organization before the facility begins operation or is used.

## PART VII

ACTIVITIES NOT PROHIBITED UNDER THIS CONVENTION IN  
ACCORDANCE WITH ARTICLE VI  
REGIME FOR SCHEDULE 2 CHEMICALS AND FACILITIES RELATED  
TO SUCH CHEMICALS

## A. DECLARATIONS

*Declarations of aggregate national data*

1. The initial and annual declarations to be provided by each State Party pursuant to Article VI, paragraphs 7 and 8, shall include aggregate national data for the previous calendar year on the quantities produced, processed, consumed, imported and exported of each Schedule 2 chemical, as well as a quantitative specification of import and export for each country involved.

2. Each State Party shall submit:

(a) Initial declarations pursuant to paragraph 1 not later than 30 days after this convention enters into force for it; and, starting in the following calendar year,

(b) Annual declarations not later than 90 days after the end of the previous calendar year.

*Declarations of plant sites producing, processing or consuming Schedule 2 chemicals*

3. Initial and annual declarations are required for all plant sites that comprise one or more plant(s) which produced, processed or consumed during any of the previous three calendar years or is anticipated to produce, process or consume in the next calendar year more than :

(a) 1 kg of a chemical designated "\*" in Schedule 2, part A;

(b) 100 kg of any other chemical listed in Schedule 2, part A; or

(c) 1 tonne of a chemical listed in Schedule 2, part B.

4. Each State Party shall submit :

(a) Initial declarations pursuant to paragraph 3 not later than 30 days after this Convention enters into force for it; and, starting in the following calendar year;

(b) Annual declarations on past activities not later than 90 days after the end of the previous calendar year;

(c) Annual declarations on anticipated activities not later than 60 days before the beginning of the following calendar year. Any such activity additionally planned after the annual declaration has been submitted shall be declared not later than five days before this activity begins.

5. Declarations pursuant to paragraph 3 are generally not required for mixtures containing a low concentration of a Schedule 2 chemical. They are only required, in accordance with guidelines, in cases where the ease of recovery from the mixture of the Schedule 2 chemical and its total weight are deemed to pose a risk to the object and purpose of this Convention. These guidelines shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21(i).

6. Declarations of a plant site pursuant to paragraph 3 shall include :

(a) The name of the plant site and the name of the owner, company, or enterprise operating it;

(b) Its precise location including the address; and

(c) The number of plants within the plant site which are declared pursuant to Part VIII to this Annex.

7. Declarations of a plant site pursuant to paragraph 3 shall also include, for each plant which is located within the plant site and which falls under the specifications set forth in paragraph 3, the following information :

(a) The name of the plant and the name of the owner, company, or enterprise operating it;

(b) Its precise location within the plant site including the specific building or structure number, if any;

(c) Its main activities;

(d) Whether the plant:

(i) Produces, processes, or consumes the declared Schedule 2 chemical (s);

(ii) Is dedicated to such activities or multi-purpose; and

(iii) Performs other activities with regard to the declared Schedule 2 chemical (s), including a specification of that other activity (e.g. storage); and

(e) The production capacity of the plant for each declared Schedule 2 chemical.

8. Declarations of a plant site pursuant to paragraph 3 shall also include the following information on each Schedule 2 chemical above the declaration threshold,—

(a) The chemical name, common or trade name used by the facility, structural formula, and Chemical Abstracts Service registry number, if assigned;

(b) In the case of the initial declaration: The total amount produced, processed, consumed, imported and exported by the plant site in each of the three previous calendar years;

(c) In the case of the annual declaration on past activities: The total amount produced, processed, consumed, imported and exported by the plant site in the previous calendar year;



(d) In the case of the annual declaration on anticipated activities: The total amount anticipated to be produced, processed or consumed by the plant site in the following calendar year, including the anticipated time periods for production, processing or consumption; and

(e) The purposes for which the chemical was or will be produced, processed or consumed:—

(i) Processing and consumption on site with a specification of the product types;

(ii) Sale or transfer within the territory or to any other place under the jurisdiction or control of the State Party, with a specification whether to other industry, trader or other destination and, if possible, of final product types;

(iii) Direct export, with a specification of the States involved; or

(iv) Other, including a specification of these other purposes.

*Declarations on past production of Schedule 2 chemicals for chemical weapons purposes*

9. Each State Party shall, not later than 30 days after this Convention enters into force for it, declare all plant sites comprising plants that produced at any time since 1 January 1946 a Schedule 2 chemical for chemical weapons purposes.

10. Declarations of a plant site pursuant to paragraph 9 shall include :

(a) The name of the plant site and the name of the owner, company, or enterprise operating it;

(b) Its precise location including the address;

(c) For each plant which is located within the plant site, and which falls under the specifications set forth in paragraph 9, the same information as required under paragraph 7, sub-paragraphs (a) to (e); and

(d) For each Schedule 2 chemical produced for chemical weapons purposes:

(i) The chemical name, common or trade name used by the plant site for chemical weapons production purposes, structural formula, and chemical Abstracts Service registry number, if assigned;

(ii) The dates when the chemical was produced and the quantity produced; and

(iii) The location to which the chemical was delivered and the final product produced there, if known.

*Information to States Parties*

11. A list of plant sites declared under this Section together with the information provided under paragraphs 6, 7 (a), 7 (c), 7 (d) (i), 7 (d) (iii), 8 (a) and 10 shall be transmitted by the Technical Secretariat to States Parties upon request.

**B. VERIFICATION***General*

12. Verification provided for in Article VI, paragraph 4, shall be carried out through on-site inspection at those of the declared plant sites that comprise one or more plants which produced, processed or consumed during any of the previous three calendar years or are anticipated to produce, process or consume in the next calendar year more than—

- (a) 10 kg of a chemical designated "\*" in Schedule 2, part A;
- (b) 1 tonne of any other chemical listed in Schedule 2, part A; or
- (c) 10 tonnes of a chemical listed in Schedule 2, part B.

13. The Programme and budget of the Organization to be adopted by the Conference pursuant to Article VIII, paragraph 21 (a) shall contain, as a separate item, a programme and budget for verification under this Section. In the allocation of resources made available for verification under Article VI, the Technical Secretariat shall, during the first three years after the entry into force of this Convention, give priority to the initial inspections of plant sites declared under Section A. The allocation shall thereafter be reviewed on the basis of the experience gained.

14. The Technical Secretariat shall conduct initial inspections and subsequent inspections in accordance with paragraphs 15 to 22.

*Inspection aims*

15. The general aim of inspections shall be to verify that activities are in accordance with obligations under this Convention and consistent with the information to be provided in declarations. Particular aims of inspections at plant sites declared under Section A shall include verification of—

- (a) The absence of any Schedule 1 chemical, especially its production, except if in accordance with Part VI of this Annex;
- (b) Consistency with declaration of levels of production, processing or consumption of Schedule 2 chemicals; and
- (c) Non-diversion of Schedule 2 chemicals for activities prohibited under this Convention.

*Initial inspections*

16. Each plant site to be inspected pursuant to paragraph 12 shall receive an initial inspection as soon as possible but preferably not later than three years after entry into force of this Convention. Plant sites declared after this period shall receive an initial inspection not later than one year after production processing or consumption is first declared. Selection of plant sites for initial inspections shall be made by the Technical Secretariat in such a way as to preclude the prediction of precisely when the plant site is to be inspected.

17. During the initial inspection, a draft facility agreement for the plant site shall be prepared unless the inspected State Party and the Technical Secretariat agree that it is not needed.

18. With regard to frequency and intensity of subsequent inspections, inspectors shall during the initial inspection assess the risk to the object and purpose of this Convention posed by the relevant chemicals, the characteristics of the plant site and the nature of the activities carried out there, taking into account, *inter alia*, the following criteria:

- (a) The toxicity of the scheduled chemicals and of the end-products produced with it, if any;
- (b) The quantity of the scheduled chemicals typically stored at the inspected site;
- (c) The quantity of feedstock chemicals for the scheduled chemicals typically stored at the inspected site;
- (d) The production capacity of the Schedule 2 plants; and
- (e) The capability and convertibility for initiating production, storage and filling of toxic chemicals at the inspected site.

#### *Inspections*

19. Having received the initial inspection, each plant site to be inspected pursuant to paragraph 12 shall be subject to subsequent inspections.

20. In selecting particular plant sites for inspection and in deciding on the frequency and intensity of inspections, the Technical Secretariat shall give due consideration to the risk to the object and purpose of this Convention posed by the relevant chemical, the characteristics of the plant site and the nature of the activities carried out there, taking into account the respective facility agreement as well as the results of the initial inspections and subsequent inspections.

21. The Technical Secretariat shall choose a particular plant site to be inspected in such a way as to preclude the prediction of exactly when it will be inspected.

22. No plant site shall receive more than two inspections per calendar year under the provisions of this Section. This, however, shall not limit inspections pursuant to Article IX.

#### *Inspection procedures*

23. In addition to agreed guidelines, other relevant provisions of this Annex and the Confidentiality Annex, paragraphs 24 to 30 below shall apply.

24. A facility agreement for the declared plant site shall be concluded not later than 90 days after completion of the initial inspection between the inspected State Party and the Organization unless the inspected State Party and the Technical Secretariat agree that it is not needed. It shall be based on a model agreement and govern the conduct of inspections at the declared plant site. The agreement shall specify the frequency and intensity of inspections as well as detailed inspection procedures, consistent with paragraphs 25 to 29.

25. The focus of the inspection shall be the declared Schedule 2 plant(s) within the declared plant site. If the inspection team requests access to other parts of the plant site, access to these areas shall be granted in accordance with the obligation to provide clarification pursuant to Part II, paragraph 51, of this Annex and in accordance with the facility agreement, or, in the absence of a facility agreement, in accordance with the rules of managed access as specified in Part X, Section C, of this Annex.

26. Access to records shall be provided, as appropriate, to provide assurance that there has been no diversion of the declared chemical and that production has been consistent with declarations.

27. Sampling and analysis shall be undertaken to check for the absence of undeclared scheduled chemicals.

28. Areas to be inspected may include:

- (a) Areas where feed chemicals (reactants) are delivered or stored;
- (b) Areas where manipulative processes are performed upon the reactants prior to addition to the reaction vessels;
- (c) Feed lines as appropriate from the areas referred to in sub-paragraph (a) or sub-paragraph (b) to the reaction vessels together with any associated valves, flow meters, etc.;
- (d) The external aspect of the reaction vessels and ancillary equipment;
- (e) Lines from the reaction vessels leading to long or short-term storage or to equipment further processing the declared Schedule 2 chemicals;
- (f) Control equipment associated with any of the items under sub-paragraphs (a) to (e);
- (g) Equipment and areas for waste and effluent handling;
- (h) Equipment and areas for disposition of chemicals not up to specification.

29. The period of inspection shall not last more than 96 hours; however, extensions may be agreed between the inspection team and the inspected State Party.

*Notification of inspection*

30. A State Party shall be notified by the Technical Secretariat of the inspection not less than 48 hours before the arrival of the inspection team at the plant site to be inspected.

**C. TRANSFERS TO STATE NOT PARTY TO THIS CONVENTION**

31. Schedule 2 chemicals shall only be transferred to or received from States Parties. This obligation shall take effect three years after entry into force of this Convention.

32. During this interim three-year period, each State Party shall require an end-use certificate, as specified below, for transfers of Schedule 2 chemicals to States not Party to this Convention. For such transfers, each State Party shall adopt the necessary measures to ensure that the transferred chemicals shall only be used for purposes not prohibited under this Convention. *Inter alia*, the State Party shall require from the recipient State a certificate stating, in relation to the transferred chemicals:

- (a) That they will only be used for purposes not prohibited under this Convention;
- (b) That they will not be re-transferred;
- (c) Their types and quantities;
- (d) Their end-use(s); and
- (e) The name(s) and address(es) of the end-user(s).



**PART VIII****ACTIVITIES NOT PROHIBITED UNDER THIS CONVENTION IN ACCORDANCE WITH ARTICLE VI****REGIME FOR SCHEDULE 3 CHEMICALS AND FACILITIES RELATED TO SUCH CHEMICALS****A. DECLARATIONS***Declarations of aggregate national data*

1. The initial and annual declarations to be provided by a State Party pursuant to Article VI, paragraphs 7 and 8, shall include aggregate national data for the previous calendar year on the quantities produced, imported and exported of each Schedule 3 chemical, as well as a quantitative specification of import and export for each country involved.

2. Each State Party shall submit:

(a) Initial declarations pursuant to paragraph 1 not later than 30 days after this Convention enters into force for it; and, starting in the following calendar year;

(b) Annual declarations not later than 90 days after the end of the previous calendar year.

*Declarations of plant sites producing Schedule 3 chemicals*

3. Initial and annual declarations are required for all plant sites that comprise one or more plants which produced during the previous calendar year or are anticipated to produce in the next calendar year more than 30 tonnes of a Schedule 3 chemical.

4. Each State Party shall submit:

(a) Initial declarations pursuant to paragraph 3 not later than 30 days after this Convention enters into force for it; and, starting in the following calendar year;

(b) Annual declarations on past activities not later than 90 days after the end of the previous calendar year;

(c) Annual declarations on anticipated activities not later than 60 days before the beginning of the following calendar year. Any such activity additionally planned after the annual declaration has been submitted shall be declared not later than five days before this activity begins.

5. Declarations pursuant to paragraph 3 are generally not required for mixtures containing a low concentration of a Schedule 3 chemical. They are only required, in accordance with guidelines, in such cases where the ease of recovery from the mixture of the Schedule 3 chemical and its total weight are deemed to pose a risk to the object and purpose of this Convention. These guidelines shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i).

6. Declarations of a plant site pursuant to paragraph 3 shall include:

(a) The name of the plant site and the name of owner, company, or enterprise operating it;

(b) Its precise location including the address; and

(c) The number of plants within the plant site which are declared pursuant to Part VII of this Annex.

7. Declarations of a plant site pursuant to paragraph 3 shall also include, for each plant which is located within the plant site and which falls under the specifications set forth in paragraph 3 the following information:

(a) The name of the plant and the name of the owner, company, or enterprise operating it;

(b) Its precise location within the plant site, including the specific building or structure number, if any;

(c) Its main activities.

8. Declarations of a plant site pursuant to paragraph 3 shall also include the following information on each Schedule 3 chemical above the declaration threshold:

(a) The chemical name, common or trade name used by the facility, structural formula, and Chemical Abstracts Service registry number, if assigned;

(b) The approximate amount of production of the chemical in the previous calendar year, or, in case of declarations on anticipated activities, anticipated for the next calendar year, expressed in the ranges: 30 to 200 tonnes, 200 to 1,000 tonnes, 1,000 to 10,000 tonnes, 10,000 to 100,000 tonnes, and above 100,000 tonnes; and

(c) The purposes for which the chemical was or will be produced.

*Declarations on past production of Schedule 3 chemicals for chemical weapons purposes*

9. Each State Party shall, not later than 30 days after this Convention enters into force for it, declare all plant sites comprising plants that produced at any time since 1 January 1946 a Schedule 3 chemical for chemical weapons purposes.

10. Declarations of a plant site pursuant to paragraph 9 shall include:

(a) The name of the plant site and the name of owner, company, or enterprise operating it;

(b) Its precise location including the address;

(c) For each plant which is located within the plant site, and which falls under the specifications set forth in paragraph 9, the same information as required under paragraph 7, sub-paragraphs (a) to (c); and

(d) For each Schedule 3 chemical produced for chemical weapons purposes:

(i) The chemical name, common or trade name used by the plant site for chemical weapons production purposes, structural formula, and Chemical Abstracts Service registry number, if assigned;

(ii) The dates when the chemical was produced and the quantity produced; and

(iii) The location to which the chemical was delivered and the final product produced there, if known.

*Information to States Parties*

11. A list of plant sites declared under this Section together with the information provided under paragraphs 6, 7(a), 7(c), 8(a) and 10 shall be transmitted by the Technical Secretariat to States Parties upon request.

**B. VERIFICATION**

*General*

12. Verification provided for in paragraph 5 of Article VI shall be carried out through on-site inspections at those declared plant sites which produced during the previous calendar year or are anticipated to produce in the next calendar year in excess of 200 tonnes aggregate of any Schedule 3 chemical above the declaration threshold of 30 tonnes.

13. The programme and budget of the Organization to be adopted by the Conference pursuant to Article VIII, paragraph 21(a), shall contain, as a separate item, a programme and budget for verification under this Section taking into account Part VII, paragraph 13, of this Annex.

14. Under this Section, the Technical Secretariat shall randomly select plant sites for inspection through appropriate mechanisms, such as the use of specially designed computer software, on the basis of the following weighting factors:

(a) Equitable geographical distribution of inspections; and

(b) The information on the declared plant sites available to the Technical Secretariat, related to the relevant chemical, the characteristics of the plant site and the nature of the activities carried out there.

15. No plant site shall receive more than two inspections per year under the provisions of this Section. This, however, shall not limit inspections pursuant to Article IX.

16. In selecting plant sites for inspection under this Section, the Technical Secretariat shall observe the following limitation for the combined number of inspections to be received by a State Party per calendar year under this Part and Part IX of this Annex: the combined number of inspections shall not exceed three plus 5 per cent. of the total number of plant sites declared by a State Party under both this Part and Part IX of this Annex, or 20 inspections, whichever of these two figures is lower.

17. At plant sites declared under Section A, the general aim of inspections shall be to verify that activities are consistent with the information to be provided in declarations. The particular aim of inspections shall be the verification of the absence of any Schedule 1 chemical, especially its production, except if in accordance with Part VI of this Annex.

#### *Inspection procedures*

18. In addition to agreed guidelines, other relevant provisions of this Annex and the Confidentiality Annex, paragraphs 19 to 25 below shall apply.

19. There shall be no facility agreement, unless requested by the inspected State Party.

20. The focus of the inspections shall be the declared Schedule 3 plant(s) within the declared plant site. If the inspection team, in accordance with Part II, paragraph 51, of this Annex, requests access to other parts of the plant site for clarification of ambiguities, the extent of such access shall be agreed between the inspection team and the inspected State Party.

21. The inspection team may have access to records in situations in which the inspection team and the inspected State Party agree that such access will assist in achieving the objectives of the inspection.

22. Sampling and on-site analysis may be undertaken to check for the absence of undeclared scheduled chemicals. In case of unresolved ambiguities, samples may be analysed in a designated off-site laboratory, subject to the inspected State Party's agreement.

23. Areas to be inspected may include:

(a) Areas where feed chemicals (reactants) are delivered or stored;

(b) Areas where manipulative processes are performed upon the reactants prior to addition to the reaction vessel;

(c) Feed lines as appropriate from the areas referred to in sub-paragraph (a) or sub-paragraph (b) to the reaction vessel together with any associated valves, flow meters, etc.;

(d) The external aspect of the reaction vessels and ancillary equipment;

(e) Lines from the reaction vessels leading to long or short-term storage or to equipment further processing the declared Schedule 3 chemicals;

(f) Control equipment associated with any of the items under sub-paragraphs (a) to (e);

(g) Equipment and areas for waste and effluent handling;

(h) Equipment and areas for disposition of chemicals not up to specification.

24. The period of inspection shall not last more than 24 hours; however, extensions may be agreed between the inspection team and the inspected State Party.

*Notification of Inspection*

25. A State Party shall be notified by the Technical Secretariat of the inspection not less than 120 hours before the arrival of the inspection team at the plant site to be inspected.

**C. TRANSFERS TO STATES NOT PARTY TO THIS CONVENTION**

26. When transferring Schedule 3 chemicals to States not Party to this Convention, each State Party shall adopt the necessary measures to ensure that the transferred chemicals shall only be used for purposes not prohibited under this Convention. *Inter alia*, the State Party shall require from the recipient State a certificate stating, in relation to the transferred chemicals

(a) That they will only be used for purposes not prohibited under this Convention;

(b) That they will not be re-transferred;

(c) Their types and quantities;

(d) Their end-use(s); and

(e) The name(s) and address(es) of the end-user(s).

27. Five years after entry into force of this Convention, the Conference shall consider the need to establish other measures regarding transfers of Schedule 3 chemicals to States not Party to this Convention.



**PART IX****ACTIVITIES NOT PROHIBITED UNDER THIS CONVENTION IN ACCORDANCE WITH ARTICLE VI****REGIME FOR OTHER CHEMICAL PRODUCTION FACILITIES****A. DECLARATIONS***List of other chemical production facilities*

1. The initial declaration to be provided by each State Party pursuant to Article VI, paragraph 7, shall include a list of all plant sites that:

(a) Produced by synthesis during the previous calendar year more than 200 tonnes of unscheduled discrete organic chemicals; or

(b) Comprise one or more plants which produced by synthesis during the previous calendar year more than 30 tonnes of an unscheduled discrete organic chemical containing the elements phosphorus, sulfur or fluorine (hereinafter referred to as "PSF-plants" and "PSF-chemical").

2. The list of other chemical production facilities to be submitted pursuant to paragraph 1 shall not include plant sites that exclusively produced explosives or hydrocarbons.

3. Each State Party shall submit its list of other chemical production facilities pursuant to paragraph 1 as part of its initial declaration not later than 30 days after this Convention enters into force for it. Each State Party shall, not later than 90 days after the beginning of each following calendar year, provide annually the information necessary to update the list.

4. The list of other chemical production facilities to be submitted pursuant to paragraph 1 shall include the following information on each plant site:

(a) The name of the plant site and the name of the owner, company, or enterprise operating it;

(b) The precise location of the plant site including its address;

(c) Its main activities; and

(d) The approximate number of plants producing the chemicals specified in paragraph 1 in the plant site.

5. With regard to plant sites listed pursuant to paragraph 1 (a), the list shall also include information on the approximate aggregate amount of production of the unscheduled discrete organic chemicals in the previous calendar year expressed in the ranges: under 1,000 tonnes, 1,000 to 10,000 tonnes and above 10,000 tonnes.

6. With regard to plant sites listed pursuant to paragraph 1 (b), the list shall also specify the number of PSF-plants within the plant site and include information on the approximate aggregate amount of production of PSF-chemicals produced by each PSF-plant in the previous calendar year expressed in the ranges: under 200 tonnes, 200 to 1,000 tonnes, 1,000 to 10,000 tonnes and above 10,000 tonnes.

*Assistance by the Technical Secretariat*

7. If a State Party, for administrative reasons, deems it necessary to ask for assistance in compiling its list of chemical production facilities pursuant to paragraph 1, it may request the Technical Secretariat to provide such assistance. Questions as to the completeness of the list shall then be resolved through consultations between the State Party and the Technical Secretariat.

*Information to States Parties*

8. The lists of other chemical production facilities submitted pursuant to paragraph 1, including the information provided under paragraph 4, shall be transmitted by the Technical Secretariat to States Parties upon request.

**B. VERIFICATION***General*

9. Subject to the provisions of Section C, verification as provided for in Article VI, paragraph 6, shall be carried out through on-site inspection at:

(a) Plant sites listed pursuant to paragraph 1 (a); and

(b) Plant sites listed pursuant to paragraph 1 (b) that comprise one or more PSF-plants which produced during the previous calendar year more than 200 tonnes of a PSF-chemical.

10. The programme and budget of the Organization to be adopted by the Conference pursuant to Article VIII, paragraph 21 (a), shall contain, as a separate item, a programme and budget for verification under this Section after its implementation has started.

11. Under this Section, the Technical Secretariat shall randomly select plant sites for inspection through appropriate mechanisms, such as the use of specially designed computer software, on the basis of the following weighting factors:

(a) Equitable geographical distribution of inspections;

(b) The information on the listed plant sites available to the Technical Secretariat, related to the characteristics of the plant site and the activities carried out there; and

(c) Proposals by States Parties on a basis to be agreed upon in accordance with paragraph 25.

12. No plant site shall receive more than two inspections per year under the provisions of this Section. This, however, shall not limit inspections pursuant to Article IX.

13. In selecting plant sites for inspection under this Section, the Technical Secretariat shall observe the following limitation for the combined number of inspections to be received by a State Party per calendar year under this Part and Part VIII of this Annex: the combined number of inspections shall not exceed three plus 5 per cent of the total number of plant sites declared by a State Party under both this Part and Part VIII of this Annex, or 20 inspections, whichever of these two figures is lower.

*Inspection aims*

14. At plant sites listed under Section A, the general aim of inspections shall be to verify that activities are consistent with the information to be provided in declarations. The particular aim of inspections shall be the verification of the absence of any Schedule 1 chemical, especially its production, except if in accordance with Part VI of this Annex.

*Inspection procedures*

15. In addition to agreed guidelines, other relevant provisions of this Annex and the Confidentiality Annex, paragraphs 16 to 20 below shall apply.

16. There shall be no facility agreement, unless requested by the inspected State Party.

17. The focus of inspection at a plant site selected for inspection shall be the plant(s) producing the chemicals specified in paragraph 1, in particular the PSF-plants listed pursuant to paragraph 1 (b). The inspected State Party shall have the right to manage access to these plants in accordance with the rules of managed access as specified in Part X, Section C, of this Annex. If the inspection team, in accordance with Part II, paragraph 51, of this Annex, requests access to other parts of the plant site for clarification of ambiguities, the extent of

such access shall be agreed between the inspection team and the inspected State Party.

18. The inspection team may have access to records in situations in which the inspection team and the inspected State Party agree that such access will assist in achieving the objectives of the inspection.

19. Sampling and on-site analysis may be undertaken to check for the absence of undeclared scheduled chemicals. In cases of unresolved ambiguities, samples may be analysed in a designated off-site laboratory, subject to the inspected State Party's agreement.

20. The period of inspection shall not last more than 24 hours; however, extensions may be agreed between the inspection team and the inspected State Party.

#### *Notification of inspection*

21. A State Party shall be notified by the Technical Secretariat of the inspection not less than 120 hours before the arrival of the inspection team at the plant site to be inspected.

### **C. IMPLEMENTATION AND REVIEW OF SECTIONS B**

#### *Implementation*

22. The implementation of Section B shall start at the beginning of the fourth year after entry into force of this Convention unless the Conference, at its regular session in the third year after entry into force of this Convention, decides otherwise.

23. The Director-General shall, for the regular session of the Conference in the third year after entry into force of this Convention, prepare a report which outlines the experience of the Technical Secretariat in implementing the provisions of Parts VII and VIII of this Annex as well as of Section A of this Part.

24. At its regular session in the third year after entry into force of this Convention, the Conference, on the basis of a report of the Director-General, may also decide on the distribution of resources available for verification under Section B between "PSF-plants" and other chemical production facilities. Otherwise, this distribution shall be left to the expertise of the Technical Secretariat and be added to the weighting factors in paragraph 11.

25. At its regular session in the third year after entry into force of this Convention, the Conference, upon advice of the Executive Council, shall decide on which basis (e. g. regional) proposals by States Parties for inspection should be presented to be taken into account as a weighting factor in the selection process specified in paragraph 11.

#### *Review*

26. At the first special session of the Conference convened pursuant to Article VIII, paragraph 22, the provisions of this Part of the Verification Annex shall be re-examined in the light of a comprehensive review of the overall verification regime for the chemical industry (Article VI, Parts VII to IX of this Annex) on the basis of the experience gained. The Conference shall then make recommendations so as to improve the effectiveness of the verification regime.

**PART X****CHALLENGE INSPECTIONS PURSUANT TO ARTICLE IX****A. DESIGNATION AND SELECTION OF INSPECTORS AND INSPECTION ASSISTANTS**

1. Challenge inspections pursuant to Article IX shall only be performed by inspectors and inspection assistants especially designated for this function. In order to designate inspectors and inspection assistants for challenge inspections pursuant to Article IX, the Director-General shall, by selecting inspectors and inspection assistants from among the inspectors and inspection assistants for routine inspection activities, establish a list of proposed inspectors and inspection assistants. It shall comprise a sufficiently large number of inspectors and inspection assistants having the necessary qualification, experience, skill and training, to allow for flexibility in the selection of the inspectors, taking into account their availability, and the need for rotation. Due regard shall be paid also to the importance of selecting inspectors and inspection assistants on as wide a geographical basis as possible. The designation of inspectors and inspection assistants shall follow the procedures provided for under Part II, Section A, of this Annex.

2. The Director-General shall determine the size of the inspection team and select its members taking into account the circumstances of a particular request. The size of the inspection team shall be kept to a minimum necessary for the proper fulfilment of the inspection mandate. No national of the requesting State Party or the inspected State Party shall be a member of the inspection team.

**B. PRE-INSPECTION ACTIVITIES**

3. Before submitting the inspection request for a challenge inspection, the State Party may seek confirmation from the Director-General that the Technical Secretariat is in a position to take immediate action on the request. If the Director-General cannot provide such confirmation immediately, he shall do so at the earliest opportunity, in keeping with the order of requests for confirmation. He shall also keep the State Party informed of when it is likely that immediate action can be taken. Should the Director-General reach the conclusion that timely action on requests can no longer be taken, he may ask the Executive Council to take appropriate action to improve the situation in the future.

**Notification**

4. The inspection request for a challenge inspection to be submitted to the Executive Council and the Director-General shall contain at least the following information:

- (a) The State Party to be inspected and, if applicable, the Host State;
- (b) The point of entry to be used;
- (c) The size and type of the inspection site;
- (d) The concern regarding possible non-compliance with this Convention including a specification of the relevant provisions of this Convention about which the concern has arisen, and of the nature and circumstances of the possible non-compliance as well as all appropriate information on the basis of which the concern has arisen; and
- (e) The name of the observer of the requesting State Party.

The requesting State Party may submit any additional information it deems necessary.

5. The Director-General shall within one hour acknowledge to the requesting State Party receipt of its request.

6. The requesting State Party shall notify the Director-General of the location of the inspection site in due time for the Director-General to be able to provide this information to



the inspected State Party not less than 12 hours before the planned arrival of the inspection team at the point of entry.

7. The inspection site shall be designated by the requesting State Party as specifically as possible by providing a site diagram related to a reference point with geographic coordinates, specified to the nearest second if possible. If possible, the requesting State Party shall also provide a map with a general indication of the inspection site and a diagram specifying as precisely as possible the requested perimeter of the site to be inspected.

8. The requested perimeter shall:

- (a) Run at least a 10 metre distance outside any buildings or other structures;
- (b) Not cut through existing security enclosures; and
- (c) Run at least a 10 metre distance outside any existing security enclosures that the requesting State Party intends to include within the requested perimeter.

9. If the requested perimeter does not conform with the specifications of paragraph 8, it shall be redrawn by the inspection team so as to conform with that provision.

10. The Director-General shall, not less than 12 hours before the planned arrival of the inspection team at the point of entry, inform the Executive Council about the location of the inspection site as specified in paragraph 7.

11. Contemporaneously with informing the Executive Council according to paragraph 10, the Director-General shall transmit the inspection request to the inspected State Party including the location of the inspection site as specified in paragraph 7. This notification shall also include the information specified in Part II, paragraph 32, of this Annex.

12. Upon arrival of the inspection team at the point of entry, the inspected State Party shall be informed by the inspection team of the inspection mandate.

*Entry into the territory of the inspected State Party or the Host State*

13. The Director-General shall, in accordance with Article IX, paragraphs 13 to 18, dispatch an inspection team as soon as possible after an inspection request has been received. The inspection team shall arrive at the point of entry specified in the request in the minimum time possible, consistent with the provisions of paragraphs 10 and 11.

14. If the requested perimeter is acceptable to the inspected State Party, it shall be designated as the final perimeter as early as possible, but in no case later than 24 hours after the arrival of the inspection team at the point of entry. The inspected State Party shall transport the inspection team to the final perimeter of the inspection site. If the inspected State Party deems it necessary, such transportation may begin up to 12 hours before the expiry of the time period specified in this paragraph for the designation of the final perimeter. Transportation shall, in any case, be completed not later than 36 hours after the arrival of the inspection team at the point of entry.

15. For all declared facilities, the procedures in sub-paragraphs (a) and (b) shall apply. [For the purposes of this Part, "declared facility" means all facilities declared pursuant to Articles III, IV and V. With regard to Article VI, "declared facility" means only facilities declared pursuant to Part VI of this Annex, as well as declared plants specified by declarations pursuant to Part VII, paragraphs 7 and 10 (c), and Part VIII, paragraphs 7 and 10 (c), of this Annex]:

- (a) If the requested perimeter is contained within or conforms with the declared perimeter, the declared perimeter shall be considered the final perimeter. The final perimeter may, however, if agreed by the inspected State Party, be made smaller in order to conform with the perimeter requested by the requesting State Party.

(b) The inspected State Party shall transport the inspection team to the final perimeter as soon as practicable, but in any case shall ensure their arrival at the perimeter not later than 24 hours after the arrival of the inspection team at the point of entry.

*Alternative determination of final perimeter*

16. At the point of entry, if the inspected State Party cannot accept the requested perimeter, it shall propose an alternative perimeter as soon as possible, but in any case not later than 24 hours after the arrival of the inspection team at the point of entry. In case of differences of opinion, the inspected State Party and the inspection team shall engage in negotiations with the aim of reaching agreement on a final perimeter.

17. The alternative perimeter should be designated as specifically as possible in accordance with paragraph 8. It shall include the whole of the requested perimeter and should, as a rule, bear a close relationship to the latter, taking into account natural terrain features and man-made boundaries. It should normally run close to the surrounding security barrier if such a barrier exists. The inspected State Party should seek to establish such a relationship between the perimeters by a combination of at least two of the following means:

(a) An alternative perimeter that does not extend to an area significantly greater than that of the requested perimeter;

(b) An alternative perimeter that is a short, uniform distance from the requested perimeter;

(c) At least part of the requested perimeter is visible from the alternative perimeter.

18. If the alternative perimeter is acceptable to the inspection team, it shall become the final perimeter and the inspection team shall be transported from the point of entry to that perimeter. If the inspected State Party deems it necessary, such transportation may begin up to 12 hours before the expiry of the time period specified in paragraph 16 for proposing an alternative perimeter. Transportation shall, in any case, be completed not later than 36 hours after the arrival of the inspection team at the point of entry.

19. If a final perimeter is not agreed, the perimeter negotiations shall be concluded as early as possible, but in no case shall they continue more than 24 hours after the arrival of the inspection team at the point of entry. If no agreement is reached, the inspected State Party shall transport the inspection team to a location at the alternative perimeter. If the inspected State Party deems it necessary, such transportation may begin up to 12 hours before the expiry of the time period specified in paragraph 16 for proposing an alternative perimeter. Transportation shall, in any case, be completed not later than 36 hours after the arrival of the inspection team at the point of entry.

20. Once at the location, the inspected State Party shall provide the inspection team with prompt access to the alternative perimeter to facilitate negotiations and agreement on the final perimeter and access within the final perimeter.

21. If no agreement is reached within 72 hours after the arrival of the inspection team at the location, the alternative perimeter shall be designated the final perimeter.

*Verification of location*

22. To help establish that the inspection site to which the inspection team has been transported corresponds to the inspection site specified by the requesting State Party, the inspection team shall have the right to use approved location-finding equipment and have such equipment installed according to its directions. The inspection team may verify its location by reference to local landmarks identified from maps. The inspected State Party shall assist the inspection team in this task.

*Securing the site, exit monitoring*

23. Not later than 12 hours after the arrival of the inspection team at the point of entry, the inspected State Party shall begin collecting factual information of all vehicular exit activity from all exit points for all land, air, and water vehicles of the requested perimeter. It shall provide this information to the inspection team upon its arrival at the alternative or final perimeter, whichever occurs first.

24. This obligation may be met by collecting factual information in the form of traffic logs, photographs, video recordings, or data from chemical evidence equipment provided by the inspection team to monitor such exit activity. Alternatively, the inspected State Party may also meet this obligation by allowing one or more members of the inspection team independently to maintain traffic logs, take photographs, make video recordings of exit traffic, or use chemical evidence equipment, and conduct other activities as may be agreed between the inspected State Party and the inspection team.

25. Upon the inspection team's arrival at the alternative perimeter or final perimeter, whichever occurs first, securing the site, which means exit monitoring procedures by the inspection team, shall begin.

26. Such procedures shall include: the identification of vehicular exits, the making of traffic logs, the taking of photographs, and the making of video recordings by the inspection team of exits and exit traffic. The inspection team has the right to go, under escort, to any other part of the perimeter to check that there is no other exit activity.

27. Additional procedures for exit monitoring activities as agreed upon by the inspection team and the inspected State Party may include, *inter alia*:

- (a) Use of sensors;
- (b) Random selective access;
- (c) Sample analysis.

28. All activities for securing the site and exit monitoring shall take place within a band around the outside of the perimeter, not exceeding 50 metres in width, measured outward.

29. The inspection team has the right to inspect on a managed access basis vehicular traffic exiting the site. The inspected State Party shall make every reasonable effort to demonstrate to the inspection team that any vehicle, subject to inspection, to which the inspection team is not granted full access, is not being used for purposes related to the possible non-compliance concerns raised in the inspection request.

30. Personnel and vehicles entering and personnel and personal passenger vehicles exiting the site are not subject to inspection.

31. The application of the above procedure may continue for the duration of the inspection, but may not unreasonably hamper or delay the normal operation of the facility.

*Pre-inspection briefing and inspection plan*

32. To facilitate development of an inspection plan, the inspected State Party shall provide a safety and logistical briefing to the inspection team prior to access.

33. The pre-inspection briefing shall be held in accordance with Part II, paragraph 37, of this Annex. In the course of the pre-inspection briefing, the inspected State party may indicate to the inspection team the equipment, documentation, or areas it considers sensitive and not related to the purpose of the challenge inspection. In addition, personnel responsible for the site shall brief the inspection team on the physical layout and other relevant characteristics of the site. The inspection team shall be provided with a map or sketch drawn to scale showing all structures and significant geographic features at the site. The inspection team shall also be briefed on the availability of facility personnel and records.

34. After the pre-inspection briefing, the inspection team shall prepare, on the basis of the information available and appropriate to it, an initial inspection plan which specifies the activities to be carried out by the inspection team, including the specific areas of the site to which access is desired. The inspection plan shall also specify whether the inspection team will be divided into subgroups. The inspection plan shall be made available to the representatives of the inspected State Party and the inspection site. Its implementation shall be consistent with the provisions of Section C, including those related to access and activities.

#### *Perimeter activities*

35. Upon the inspection team's arrival at the final or alternative perimeter, whichever occurs first, the team shall have the right to commence immediately perimeter activities in accordance with the procedures set forth under this Section, and to continue these activities until the completion of the challenge inspection.

36. In conducting the perimeter activities, the inspection team shall have the right to:

(a) Use monitoring instruments in accordance with Part II, paragraphs 27 to 30, of this annex;

(b) Take wipes, air, soil or effluent samples; and

(c) Conduct any additional activities which may be agreed between the inspection team and inspected State Party.

37. The perimeter activities of the inspection team may be conducted within a band around the outside of the perimeter up to 50 meters in width measured outward from the perimeter. If the inspected State Party agrees, the inspection team may also have access to any building or structure within the perimeter band. All directional monitoring shall be oriented inward. For declared facilities, at the discretion of the inspected State Party, the band could run inside, outside, or on both sides of the declared perimeter.

### **C. CONDUCT OF INSPECTIONS**

#### *General rules*

38. The inspected State Party shall provide access within the requested perimeter as well as, if different, the final perimeter. The extent and nature of access to a particular place or places within these perimeters shall be negotiated between the inspection team and the inspected State Party on a managed access basis.

39. The inspected State Party shall provide access within the requested perimeter as soon as possible, but in any case not later than 108 hours after the arrival of the inspection team at the point of entry in order to clarify the concern regarding possible non-compliance with this Convention raised in the inspection request.

40. Upon the request of the inspection team, the inspected State Party may provide aerial access to the inspection site.

41. In meeting the requirement to provide access as specified in paragraph 38, the inspected State Party shall be under the obligation to allow the greatest degree of access taking into account any constitutional obligations it may have with regard to proprietary rights or searches and seizures. The inspected State Party has the right under managed access to take such measures as are necessary to protect national security. The provisions in this paragraph may not be invoked by the inspected State Party to conceal evasion of its obligations not to engage in activities prohibited under this Convention.

42. If the inspected State Party provides less than full access to places, activities, or information, it shall be under the obligation to make every reasonable effort to provide alternative means to clarify the possible non-compliance concern that generated the challenge inspection.



43. Upon arrival at the final perimeter of facilities declared pursuant to Articles IV, V and VI, access shall be granted following the pre-inspection briefing and discussion of the inspection plan which shall be limited to the minimum necessary and in any event shall not exceed three hours. For facilities declared pursuant to Article III, paragraph 1 (d), negotiations shall be conducted and managed access commenced not later than 12 hours after arrival at the final perimeter.

44. In carrying out the challenge inspection in accordance with the inspection request, the inspection team shall use only those methods necessary to provide sufficient relevant facts to clarify the concern about possible non-compliance with the provisions of this Convention, and shall refrain from activities not relevant thereto. It shall collect and document such facts as are related to the possible non-compliance with this Convention by the inspected State Party, but shall neither seek nor document information which is clearly not related thereto, unless the inspected State party expressly requests it to do so. Any material collected and subsequently found not to be relevant shall not be retained.

45. The inspection team shall be guided by the principle of conducting the challenge inspection in the least intrusive manner possible, consistent with the effective and timely accomplishment of its mission. Wherever possible, it shall begin with the least intrusive procedures it deems acceptable and proceed to more intrusive procedures only as it deems necessary.

#### *Managed access*

46. The inspection team shall take into consideration suggested modifications of the inspection plan and proposals which may be made by the inspected State party, at whatever stage of the inspection including the pre-inspection briefing, to ensure that sensitive equipment, information or areas, not related to chemical weapons, are protected.

47. The inspected State Party shall designate the perimeter entry/exit points to be used for access. The inspection team and the inspected State party shall negotiate: the extent of access to any particular place or places within the final and requested perimeters as provided in paragraph 48; the particular inspection activities, including sampling, to be conducted by the inspection team; the performance of particular activities by the inspected State Party; and the provision of particular information by the inspected State party.

48. In conformity with the relevant provisions in the Confidentiality Annex the inspected State Party shall have the right to take measures to protect sensitive installations and prevent disclosure of confidential information and data not related to chemical weapons. Such measures may include, *inter alia*:

- (a) Removal of sensitive papers from office spaces;
- (b) Shrouding of sensitive displays, stores, and equipment;
- (c) Shrouding of sensitive pieces of equipment, such as computer or electronic systems;
- (d) Logging off of computer systems and turning off of data indicating devices;
- (e) Restriction of sample analysis to presence or absence of chemicals listed in Schedules 1, 2 and 3 or appropriate degradation products;
- (f) Using random selective access techniques whereby the inspectors are requested to select a given percentage or number of buildings of their choice to inspect; the same principle can apply to the interior and content of sensitive buildings;
- (g) In exceptional cases, giving only individual inspectors access to certain parts of the inspection site.

49. The inspected State Party shall make every reasonable effort to demonstrate to the inspection team that any object, building, structure, container or vehicle to which the inspection team has not had full access, or which has been protected in accordance with paragraph 48,

is not used for purposes related to the possible non-compliance concerns raised in the inspection request.

50. This may be accomplished by means of, *inter alia*, the partial removal of a shroud or environmental protection cover, at the discretion of the inspected State Party, by means of a visual inspection of the interior of an enclosed space from its entrance, or by other methods.

51. In the case of facilities declared pursuant to Articles IV, V and VI, the following shall apply:

(a) For facilities with facility agreements, access and activities within the final perimeter shall be unimpeded within the boundaries established by the agreements.

(b) For facilities without facility agreements, negotiation of access and activities shall be governed by the applicable general inspection guidelines established under this Convention.

(c) Access beyond that granted for inspections under Articles IV, V and VI shall be managed in accordance with procedures of this section.

52. In the case of facilities declared pursuant to Article III, paragraph 1 (d), the following shall apply: if the inspected State Party, using procedures of paragraphs 47 and 48, has not granted full access to areas or structures not related to chemical weapons, it shall make every reasonable effort to demonstrate to the inspection team that such areas or structures are not used for purposes related to the possible non-compliance concerns raised in the inspection request.

#### Observer

53. In accordance with the provisions of Article IX, paragraph 12, on the participation of an observer in the challenge inspection, the requesting State Party shall liaise with the Technical Secretariat to coordinate the arrival of the observer at the same point of entry as the inspection team within a reasonable period of the inspection team's arrival.

54. The observer shall have the right throughout the period of inspection to be in communication with the embassy of the requesting State Party or in the Host State or, in the case of absence of an embassy, with the requesting State Party itself. The inspected State Party shall provide means of communication to the observer.

55. The observer shall have the right to arrive at the alternative or final perimeter of the inspection site, wherever the inspection team arrives first, and to have access to the inspection site as granted by the inspected State Party. The observer shall have the right to make recommendations to the inspection team, which the team shall take into account to the extent it deems appropriate. Throughout the inspection, the inspection team shall keep the observer informed about the conduct of the inspection and the findings.

56. Throughout the in-country period, the inspected State Party shall provide or arrange for the amenities necessary for the observer such as communication means, interpretation services, transportation, working space, lodging, meals and medical care. All the costs in connection with the stay of the observer on the territory of the inspected State Party or the Host State shall be borne by the requesting State Party.

#### Duration of inspection

57. The period of inspection shall not exceed 84 hours, unless extended by agreement with the inspected State Party.

### D. POST-INSPECTION ACTIVITIES

#### Departure

58. Upon completion of the post-inspection procedures at the inspection site, the inspection team and the observer of the requesting State Party shall proceed promptly to a

point of entry and shall then leave the territory of the inspected State party in the minimum time possible.

#### *Reports*

59. The inspection report shall summarize in a general way the activities conducted by the inspection team and the factual findings of the inspection team, particularly with regard to the concerns regarding possible non-compliance with this Convention cited in the request for the challenge inspection, and shall be limited to information directly related to this Convention. It shall also include an assessment by the inspection team of the degree and nature of access and cooperation granted to the inspectors and the extent to which this enabled them to fulfil the inspection mandate. Detailed information relating to the concerns regarding possible non-compliance with this Convention cited in the request for the challenge inspection shall be submitted as an Appendix to the final report and be retained within the Technical Secretariat under appropriate safeguards to protect sensitive information.

60. The inspection team shall, not later than 72 hours after its return to its primary work location, submit a preliminary inspection report, having taken into account, *inter alia*, paragraph 17 of the Confidentiality Annex, to the Director-General. The Director-General shall promptly transmit the preliminary inspection report to the requesting State Party, the inspected State Party and to the Executive Council.

61. A draft final inspection report shall be made available to the inspected State Party not later than 20 days after the completion of the challenge inspection. The inspected State Party has the right to identify any information and data not related to chemical weapons which should, in its view, due to its confidential character, not be circulated outside the Technical Secretariat. The Technical Secretariat shall consider proposals for changes to the draft final inspection report made by the inspected State Party and, using its own discretion, wherever possible, adopt them. The final report shall then be submitted not later than 30 days after the completion of the challenge inspection to the Director-General for further distribution and consideration in accordance with Article IX, paragraphs 21 to 25.

**PART XI****INVESTIGATIONS IN CASES OF ALLEGED USE OF CHEMICAL WEAPONS****A. GENERAL**

1. Investigations of alleged use of chemical weapons, or of alleged use of riot control agents as a method of warfare, initiated pursuant to Articles IX or X, shall be conducted in accordance with this Annex and detailed procedures to be established by the Director-General.

2. The following additional provisions address specific procedures required in cases of alleged use of chemical weapons.

**B. PRE-INSPECTION ACTIVITIES*****Request for an investigation***

3. The request for an investigation of an alleged use of chemical weapons to be submitted to the Director-General, to the extent possible, should include the following information:

- (a) The State Party on whose territory use of chemical weapons is alleged to have taken place;
- (b) The point of entry or other suggested safe routes of access;
- (c) Location and characteristics of the areas where chemical weapons are alleged to have been used;
- (d) When chemical weapons are alleged to have been used;
- (e) Types of chemical weapons believed to have been used;
- (f) Extent of alleged use;
- (g) Characteristics of the possible toxic chemicals;
- (h) Effects on humans, animals and vegetation;
- (i) Request for specific assistance, if applicable.

4. The State Party which has requested an investigation may submit at any time any additional information it deems necessary.

***Notification***

5. The Director-General shall immediately acknowledge receipt to the requesting State Party of its request and inform the Executive Council and all States Parties.

6. If applicable, the Director-General shall notify the State Party on whose territory an investigation has been requested. The Director-General shall also notify other States Parties if access to their territories might be required during the investigation.

***Assignment of inspection team***

7. The Director-General shall prepare a list of qualified experts whose particular field of expertise could be required in an investigation of alleged use of chemical weapons and constantly keep this list updated. This list shall be communicated, in writing, to each State Party not later than 30 days after entry into force of this Convention and after each change to the list. Any qualified expert included in this list shall be regarded as designated unless a State Party, not later than 30 days after its receipt of the list, declares its non-acceptance in writing.

8. The Director-General shall select the leader and members of an inspection team from the inspectors and inspection assistants already designated for challenge inspections, taking into account the circumstances and specific nature of a particular request. In addition,



members of the inspection team may be selected from the list of qualified experts, when, in the view of the Director-General, expertise not available among inspectors already designated is required for the proper conduct of a particular investigation.

9. When briefing the inspection team, the Director-General shall include any additional information provided by the requesting State Party, or any other sources, to ensure that the inspection can be carried out in the most effective and expedient manner.

#### *Dispatch of inspection team*

10. Immediately upon the receipt of a request for an investigation of alleged use of chemical weapons the Director-General shall, through contacts with the relevant States Parties, request and confirm arrangements for the safe reception of the team.

11. The Director-General shall dispatch the team at the earliest opportunity, taking into account the safety of the team.

12. If the inspection team has not been dispatched within 24 hours from the receipt of the request, the Director-General shall inform the Executive Council and the States Parties concerned about the reasons for the delay.

#### *Briefings*

13. The inspection team shall have the right to be briefed by representatives of the inspected State Party upon arrival and at any time during the inspection.

14. Before the commencement of the inspection, the inspection team shall prepare an inspection plan to serve, *inter alia*, as a basis for logistic and safety arrangements. The inspection plan shall be updated as need arises.

### **C. CONDUCT OF INSPECTIONS**

#### *Access*

15. The inspection team shall have the right of access to any and all areas which could be affected by the alleged use of chemical weapons. It shall also have the right of access to hospitals, refugee camps and other locations it deems relevant to the effective investigation of the alleged use of chemical weapons. For such access, the inspection team shall consult with the inspected State Party.

#### *Sampling*

16. The inspection team shall have the right to collect samples of types, and in quantities it considers necessary. If the inspection team deems it necessary, and if so requested by it, the inspected State Party shall assist in the collection of samples under the supervision of inspectors or inspection assistants. The inspected State Party shall also permit and cooperate in the collection of appropriate control samples from areas neighbouring the site of the alleged use and from other areas as requested by the inspection team.

17. Samples of importance in the investigation of alleged use include toxic chemicals, munitions and devices, remnants of munitions and devices, environmental samples (air, soil, vegetation, water, snow, etc.) and biomedical samples from human or animal sources (blood, urine, excreta, tissue, etc.).

18. If duplicate samples cannot be taken and the analysis is performed at off-site laboratories, any remaining sample shall, if so requested, be returned to the inspected State Party after the completion of the analysis.

#### *Extension of inspection site*

19. If the inspection team during an inspection deems it necessary to extend the investigation into a neighbouring State Party, the Director-General shall notify that State Party about the need for access to its territory and request and confirm arrangements for the safe reception of the team.

*Extension of inspection duration*

20. If the inspection team deems that safe access to a specific area relevant to the investigation is not possible, the requesting State Party shall be informed immediately. If necessary, the period of inspection shall be extended until safe access can be provided and the inspection team will have concluded its mission.

*Interviews*

21. The inspection team shall have the right to interview and examine persons who may have been affected by the alleged use of chemical weapons. It shall also have the right to interview eye-witnesses of the alleged use of chemical weapons and medical personnel, and other persons who have treated or have come into contact with persons who may have been affected by the alleged use of chemical weapons. The inspection team shall have access to medical histories, if available, and be permitted to participate in autopsies, as appropriate, of persons who may have been affected by the alleged use of chemical weapons.

**D. REPORTS***Procedures*

22. The inspection team shall, not later than 24 hours after its arrival on the territory of the inspected State Party, send a situation report to the Director-General. It shall further throughout the investigation send progress reports as necessary.

23. The inspection team shall, not later than 72 hours after its return to its primary work location, submit a preliminary report to the Director-General. The final report shall be submitted to the Director-General not later than 30 days after its return to its primary work location. The Director-General shall promptly transmit the preliminary and final reports to the Executive Council and to all States Parties.

*Contents*

24. The situation report shall indicate any urgent need for assistance and any other relevant information. The progress reports shall indicate any further need for assistance that might be identified during the course of the investigation.

25. The final report shall summarize the factual findings of the inspection, particularly with regard to the alleged use cited in the request. In addition, a report of an investigation of an alleged use shall include a description of the investigation process, tracing its various stages, with special reference to:

(a) The locations and time of sampling and on-site analysis; and

(b) Supporting evidence, such as the records of interviews, the results of medical examinations and scientific analysis, and the documents examined by the inspection team.

26. If the inspection team collects through, *inter alia*, identification of any impurities or other substances during laboratory analysis of samples taken, any information in the course of its investigation that might serve to identify the origin of any chemical weapons used, that information shall be included in the report.

**E. STATES NOT PARTY TO THIS CONVENTION**

27. In the case of alleged use of chemical weapons involving a State not Party to this Convention or in territory not controlled by a State Party, the Organization shall closely cooperate with the Secretary-General of the United Nations. If so requested, the Organization shall put its resources at the disposal of the Secretary-General of the United Nations.

**ANEX ON THE PROTECTION OF CONFIDENTIAL INFORMATION**  
**("CONFIDENTIALITY ANNEX")**

**A. GENERAL PRINCIPLES FOR THE HANDLING OF CONFIDENTIAL INFORMATION**

1. The obligation to protect confidential information shall pertain to the verification of both civil and military activities and facilities. Pursuant to the general obligations set forth in Article VIII, the Organization shall:

(a) Require only the minimum amount of information and data necessary for the timely and efficient carrying out of its responsibilities under this Convention;

(b) Take the necessary measures to ensure that inspectors and other staff members of the Technical Secretariat meet the highest standards of efficiency, competence, and integrity;

(c) Develop agreements and regulations to implement the provisions of this Convention and shall specify as precisely as possible the information to which the Organization shall be given access by a State Party.

2. The Director-General shall have the primary responsibility for ensuring the protection of confidential information. The Director-General shall establish a stringent regime governing the handling of confidential information by the Technical Secretariat, and in doing so, shall observe the following guidelines:

(a) Information shall be considered confidential if:

(i) It is so designated by the State Party from which the information was obtained and to which the information refers; or

(ii) In the judgment of the Director-General, its unauthorized disclosure could reasonably be expected to cause damage to the State Party to which it refers or to the mechanisms for implementation of this Convention;

(b) All data and documents obtained by the Technical Secretariat shall be evaluated by the Appropriate unit of the Technical Secretariat in order to establish whether they contain confidential information. Data required by States Parties to be assured of the continued compliance with this Convention by other States Parties shall be routinely provided to them. Such data shall encompass:

(i) The initial and annual reports and declarations provided by States Parties under Articles III, IV, V and VI, in accordance with the provisions set forth in the verification Annex;

(ii) General reports on the results and effectiveness of verification activities; and

(iii) Information to be supplied to all States Parties in accordance with the provisions of this Convention;

(c) No information obtained by the Organization in connection with the implementation of this Convention shall be published or otherwise released, except, as follows:—

(i) General information on the implementation of this Convention may be compiled and released publicly in accordance with the decisions of the Conference or the Executive Council;

(ii) Any information may be released with the express consent of the State Party to which the information refers;

(iii) Information classified as confidential shall be released by the Organization only through procedures which ensure that the release of information only occurs in strict conformity with the needs of this Convention. Such procedures shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i);



(d) The level of sensitivity of confidential data or documents shall be established, based on criteria to be applied uniformly in order to ensure their appropriate handling and protection. For this purpose, a classification system shall be introduced, which by taking account of relevant work undertaken in the preparation of this Convention shall provide for clear criteria ensuring the inclusion of information into appropriate categories of confidentiality and the justified durability of the confidential nature of information. While providing for the necessary flexibility in its implementation the classification system shall protect the rights of States Parties providing confidential information. A classification system shall be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i);

(e) Confidential information shall be stored securely at the premises of the Organization. Some data or documents may also be stored with the National Authority of a State Party. Sensitive information, including, *inter alia*, photographs, plans and other documents required only for the inspection of a specific facility may be kept under lock and key at this facility;

(f) To the greatest extent consistent with the effective implementation of the verification provisions of this Convention, information shall be handled and stored by the Technical Secretariat in a form that precludes direct identification of the facility to which it pertains;

(g) The amount of confidential information removed from a facility shall be kept to the minimum necessary for the timely and effective implementation of the verification provisions of this Convention; and

(h) Access to confidential information shall be regulated in accordance with its classification. The dissemination of confidential information within the Organization shall be strictly on a need-to-know basis.

3. The Director-General shall report annually to the Conference on the implementation of the regime governing the handling of confidential information by the Technical Secretariat.

4. Each State Party shall treat information which it receives from the Organization in accordance with the level of confidentiality established for that information. Upon request, a State Party shall provide details on the handling of information provided to it by the Organization.

#### **B. EMPLOYMENT AND CONDUCT OF PERSONNEL IN THE TECHNICAL SECRETARIAT**

5. Conditions of staff employment shall be such as to ensure that access to and handling of confidential information shall be in conformity with the procedures established by the Director-General in accordance with Section A.

6. Each position in the Technical Secretariat shall be governed by a formal position description that specifies the scope of access to confidential information, if any, needed in that position.

7. The Director-General, the inspectors and the other members of the Staff shall not disclose even after termination of their functions to any unauthorized persons any confidential information coming to their knowledge in the performance of their official duties. They shall not communicate to any State, organization or person outside the Technical Secretariat any information to which they have access in connection with their activities in relation to any State Party.

8. In the discharge of their functions inspectors shall only request the information and data which are necessary to fulfil their mandate. They shall not make any records of information collected incidentally and not related to verification of compliance with this Convention.



9. The staff shall enter into individual secrecy agreements with the Technical Secretariat covering their period of employment and a period of five years after it is terminated.

10. In order to avoid improper disclosures, inspectors and staff members shall be appropriately advised and reminded about security considerations and of the possible penalties that they would incur in the event of improper disclosure.

11. Not less than 30 days before an employee is given clearance for access to confidential information that refers to activities on the territory or in any other place under the jurisdiction or control of a State Party, the State Party concerned shall be notified of the proposed clearance. For inspectors the notification of a proposed designation shall fulfil this requirement.

12. In evaluating the performance of inspectors and any other employees of the Technical Secretariat, specific attention shall be given to the employee's record regarding protection of confidential information.

#### **C. MEASURES TO PROTECT SENSITIVE INSTALLATIONS AND PREVENT DISCLOSURE OF CONFIDENTIAL DATA IN THE COURSE OF ON-SITE VERIFICATION ACTIVITIES**

13. States Parties may take such measures as they deem necessary to protect confidentiality, provided that they fulfil their obligations to demonstrate compliance in accordance with the relevant Articles and the Verification Annex. When receiving an inspection, the State Party may indicate to the inspection team the equipment, documentation or areas that it considers sensitive and not related to the purpose of the inspection.

14. Inspection teams shall be guided by the principle of conducting on-site inspections in the least intrusive manner possible consistent with the effective and timely accomplishment of their mission. They shall take into consideration proposal which may be made by the State Party receiving the inspection, at whatever stage of the inspection, to ensure that sensitive equipment or information, not related to chemical weapons, is protected.

15. Inspection teams shall strictly abide by the provisions set forth in the relevant Articles and Annexes governing the conduct of inspections. They shall fully respect the procedures designed to protect sensitive installations and to prevent the disclosure of confidential data.

16. In the elaboration of arrangements and facility agreements, due regard shall be paid to the requirement of protecting confidential information. Agreements on inspection procedures for individual facilities shall also include specific and detailed arrangements with regard to the determination of those areas of the facility to which inspectors are granted access the storage of confidential information on-site, the scope of the inspection effort in agreed areas, the taking of samples and their analysis, the access to records and the use of instruments and continuous monitoring equipment.

17. The report to be prepared after each inspection shall only contain facts relevant to compliance with this Convention. The report shall be handled in accordance with the regulations established by the Organization governing the handling of confidential information. If necessary, the information contained in the report shall be processed into less sensitive forms before it is transmitted outside the Technical Secretariat and the inspected State Party.

#### **D. PROCEDURES IN CASE OF BREACHES OR ALLEGED BREACHES OF CONFIDENTIALITY**

18. The Director-General shall establish necessary procedures to be followed in case of breaches or alleged breaches of confidentiality, taking into account recommendations to be considered and approved by the Conference pursuant to Article VIII, paragraph 21(i).

19. The Director-General shall oversee the implementation of individual secrecy agreements. The Director-General shall promptly initiate an investigation if, in his judgment, there is sufficient indication that obligations concerning the protection of confidential

information have been violated. The Director-General shall also promptly initiate an investigation if an allegation concerning on breach of confidentiality is made by a State Party.

20. The Director-General shall impose appropriate punitive and disciplinary measures on staff members who have violated their obligations to protect confidential information. In cases of serious breaches, the immunity from jurisdiction may be waived by the Director-General.

21. States Parties shall, to the extent possible, cooperate and support the Director-General in investigating any breach or alleged breach of confidentiality and taking appropriate action in case a breach has been established.

22. The Organization shall not be held liable for any breach of confidentiality committed by members of the Technical Secretariat.

23. For breaches involving both a State Party and the Organization, a "Commission for the settlement of disputes related to confidentiality", set up as a subsidiary organ of the Conference, shall consider the case. This Commission shall be appointed by the Conference. Rules governing its composition and operating procedures shall be adopted by the Conference at its first session.

Sd/-

SUBHASH C. JAIN,  
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,  
Secretary to Government.



सत्यमेव जयते

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

## PART - VI

### Acts of Parliament and Ordinances Promulgated by the President

#### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th December, 2000.

No. : RP/86/2000/Act-36/2000/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 1st September, 2000/Bhādra 10, 1922 (Saka)

The following Act of Parliament received the assent of the President on the 1st September, 2000, and is hereby published for general information :—

#### THE CABLE TELEVISION NETWORKS (REGULATION) AMENDMENT ACT, 2000

(Act No. 36 of 2000)

(1st September, 2000.)

An Act further to amend the Cable Television Networks (Regulation) Act, 1995.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Cable Television Networks (Regulation) Amendment Act, 2000. Short title.

7 of 1995.

2. In the Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as the principal Act), in section 2, clause (a) shall be re-lettered as clause (aa) and before clause (aa) as so re-lettered, the following clause shall be inserted, namely:— Amendment of section 2.

‘(a) “authorised officer” means, within his local limits of jurisdiction,—

- (i) a District Magistrate, or
- (ii) a Sub-divisional Magistrate, or
- (iii) a Commissioner of Police,

and includes any other officer notified in the Official Gazette, by the Central Government or the State Government, to be an authorised officer for such local limits of jurisdiction as may be determined by that Government;’.

3. In section 5 of the principal Act, the proviso shall be omitted. Amendment of section 5.

Amendment of  
section 6.

4. In section 6 of the principal Act, the proviso shall be omitted.

Substitution of  
new section for  
section 8.

5. For section 8 of the principal Act, the following section shall be substituted, namely:—

Compulsory  
transmission of  
Doordarshan  
channels.

“(1) Every cable operator shall, from the commencement of the Cable Television Networks (Regulation) Amendment Act, 2000, re-transmit at least two Doordarshan terrestrial channels and one regional language channel of a State in the prime band, in satellite mode on frequencies other than those carrying terrestrial frequencies.

(2) The Doordarshan channels referred to in sub-section (1) shall be re-transmitted without any deletion or alteration of any programme transmitted on such channels.

(3) The Prasar Bharati (Broadcasting Corporation of India) established under sub-section (1) of section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 may, by notification in the Official Gazette, specify the number and name of every Doordarshan channel to be re-transmitted by cable operators in their cable service and the manner of reception and re-transmission of such channels.”

25 of 1990.

Amendment of  
section 11.

6. In section 11 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) If any authorised officer has reason to believe that the provisions of sections 3, 5, 6 or 8 have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network.”

Amendment of  
section 18.

7. In section 18 of the principal Act, for the portion beginning with the words “by such officer” and ending with the words “specify in this behalf”, the words “by any authorised officer” shall be substituted.

Amendment of  
section 19.

8. In section 19 of the principal Act,—

(i) for the portion beginning with the words “an officer, not below the rank of” and ending with the words “by the State Government in this behalf”, the words “any authorised officer” shall be substituted;

(ii) for the words “any particular programme if it is”, the words and figures “any programme or channel if, it is not in conformity with the prescribed programme code referred to in section 5 and advertisement code referred to in section 6 or if it is” shall be substituted.

Amendment of  
section 20.

9. Section 20 of the principal Act shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

“(2) Where the Central Government thinks it necessary or expedient so to do in the interest of the—

(i) sovereignty or integrity of India; or

(ii) security of India; or

(iii) friendly relations of India with any foreign State; or

(iv) public order, decency or morality,

it may, by order, regulate or prohibit the transmission or re-transmission of any channel or programme.



(3) Where the Central Government considers that any programme of any channel is not in conformity with the prescribed programme code referred to in section 5 or the prescribed advertisement code referred to in section 6, it may by order, regulate or prohibit the transmission or re-transmission of such programme."

Sd/-

SUBHASH C. JAIN,  
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

V. M. KODHARE,  
*Secretary to Government.*

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.